

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 13-74303-ast

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6 In the Matter of:

7  
8 PERSONAL COMMUNICATIONS DEVICES, LLC,

9

10 Debtors.

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12 - - - - - x

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14 U.S. Bankruptcy Court

15 Alfonse M. D'Amato Federal Courthouse

16 271-C Cadman Plaza East

17 Brooklyn, New York

18

19 October 10, 2013

20 10:47 AM

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23 B E F O R E :

24 HON ALAN S. TRUST

25 U.S. BANKRUPTCY JUDGE

1     Hearing on the Approval of the Successful Bid(s) and Backup  
2     Bid(s) [10]

3

4     Adj Motion for 2004 Examination Motion of the Official  
5     Committee of Unsecured Creditors for Leave to Conduct  
6     Discovery of the Second Lien Lenders Filed by Schuyler G.  
7     Carroll on behalf of Official Committee of Unsecured  
8     Creditors [143]

9

10    Adj Motion for 2004 Examination Motion of the Official  
11    Committee of Unsecured Creditors for Leave to Conduct  
12    Discovery of Debtors Filed by Schuyler G. Carroll on behalf  
13    of Official Committee of Unsecured Creditors [140]

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25    Transcribed by: Sherri L. Breach, CERT\*D-397

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1 P R O C E E D I N G S

2 THE CLERK: Calendar Number 1, 2 and 3, Case  
3 Number 13-74303, Personal Communications Devices, LLC.

4 THE COURT: I'll take appearances, please, first  
5 in the Brooklyn courtroom.

6 MR. GRILLO: Sure. Emmanuel Grillo, G-R-I-L-L-O,  
7 Goodwin & Proctor, LLP, counsel on behalf of the debtors.

8 MR. CARROLL: Good morning, Your Honor. Schuyler  
9 Carroll of Perkins Coie on behalf of the official committee  
10 of unsecured creditors.

11 MR. GLERUM: Good morning, Your Honor. Charlie  
12 Glerum, G-L-E-R-U-M, of Edwards Wildman here on behalf of  
13 JPMorgan Chase.

14 MR. DOSHI: Good morning, Your Honor. Amish Doshi  
15 on behalf of Oracle America, Inc.

16 MR. GOLDBERG: Good morning, Your Honor. Adam  
17 Goldberg of Latham & Watkins on behalf of DLJ Investment  
18 Partners.

19 MS. BAGLANZIS: Good morning, Your Honor. Angela  
20 Baglanzis of Obermayer, Rebmann, Maxwell & Hippel. I'm here  
21 with Mr. Edmond George, also of my firm, we filed a motion  
22 for pro hac for him. We represent Verizon Wireless.

23 THE COURT: All right. Good morning.

24 MR. GEORGE: Good morning, Your Honor. Edmond  
25 George from Obermayer.

1 THE COURT: Okay.

2 MR. GEORGE: I don't know, Your Honor, that I'll  
3 necessarily have anything to say today, but I'm not licensed  
4 here and Ms. Baglantzis moved -- filed a motion for pro hac  
5 admission. So I don't know how you're handle -- Your Honor  
6 wants to handle that or --

7 THE COURT: I'm sure the order will be processed  
8 and if -- if there's something you need to add, feel free.

9 MR. GEORGE: Thank you, Judge.

10 THE COURT: All right.

11 MR. FOX: Your Honor, Shawn Fox from McGuire Woods  
12 on behalf of Sprint and Virgin Mobile.

13 MR. SALZBERG: Good morning, Your Honor. Mark  
14 Salzberg, Patton Boggs on behalf of the Pine Bridge  
15 entities.

16 MR. WIELEBINSKI: Good morning, Your Honor. Joe  
17 Wielebinski with Munsch Hardt. I represent the stalking  
18 horse buyer, Quality One Wireless. Also with me today is  
19 Marshall Harris, general counsel for Quality One Wireless  
20 sitting over there.

21 THE COURT: All right.

22 Then in the Central Islip courtroom.

23 MS. BLACK: Christine Black, Office of the United  
24 States Trustee.

25 THE COURT: And understand we may have parties on



1 the telephone who are listening in. I'll just take  
2 appearances if there's anyone on the telephone who is  
3 listening in.

4 MS. LAMANNA: Yes, Your Honor. Kathleen Lamanna  
5 of Shipman & Goodwin for U.S. Bank as administrative agent.

6 MR. HAUT: Your Honor, Mark Haut with Norton Rose  
7 Fulbright representing AT&T.

8 MR. FRIEDMAN: Your Honor, Scott Friedman  
9 represented Claims Recovery Group.

10 THE COURT: All right. Anyone else?

11 All right. Then, Mr. Grillo, if you would bring  
12 us up to speed on the status of the sale and efforts to  
13 resolve the various objections.

14 MR. GRILLO: I do, Your Honor. But before I do  
15 that, a couple of things.

16 One is a word of thanks first to you and your  
17 staff. Everyone in the courtroom is keenly aware of the  
18 larger government picture that's out there. We appreciate,  
19 one, you accommodating us here and, two, both the people who  
20 are here in the courtroom today and in the building making  
21 it available to us notwithstanding the larger government  
22 issue.

23 So we do want to express, on behalf of I think  
24 everybody, all of our thanks. And people have talked about  
25 it over the last couple of days. So we did want to say that

1 first.

2 THE COURT: All right. Well, very well.

3 MR. GRILLO: Okay.

4 THE COURT: As far as I know, we've got four or  
5 five days to wrap this up.

6 (Laughter)

7 MR. GRILLO: I was hoping Your Honor wouldn't say  
8 that because -- now to the status update and where we are at  
9 the moment.

10 We -- well, let me back up a little bit. We run  
11 an auction process. We had people participate for an  
12 extended period of time. We met yesterday with all of the  
13 parties in interest. We left the bidding open for a  
14 considerable period of time. We had not, at least as of  
15 that point, received a fully qualified bid. We extended the  
16 date through that point in time.

17 What we've done is in that time, or since that  
18 time, we've worked with the parties who were at the time --  
19 Quality One Wireless, the committee, our senior lenders, our  
20 junior lenders -- to try and reach a resolution on the open  
21 issues. Your Honor is aware that the committee has filed an  
22 extensive objection. We had other objections on limited  
23 issues.

24 I'm pleased to say with respect to the limited  
25 objections, if I can address those first for a moment,

1 Verizon, AT&T both filed objections that primarily, but not  
2 exclusively, had to do with existing purchase orders, making  
3 sure that those were assumed by the buyer and that there  
4 would be no gap in liability upon the closing of a sale for  
5 liabilities that the buyer was assuming, particularly  
6 warranty liabilities and what we typically call MDF  
7 liabilities. Effectively, providing continuity of service  
8 in connection with those contracts.

9 We've agreed on language in the form of the order  
10 that addresses those concerns.

11 Oracle also filed an objection. We noted that  
12 counsel had made his appearance a couple of moments ago.  
13 They raised two sets of issues, one with respect to adequate  
14 assurance. We believe, and they can certainly confirm, that  
15 those -- that that part of the issue is resolved. There's  
16 an open issue that we need to carry relating to a split of  
17 the license. And what we mean by that, Your Honor, is that  
18 as part of the transition from PCD to Quality One --  
19 assuming we ultimately get to that point -- there would be a  
20 sharing of the software, the hardware, and the data that  
21 Oracle provides service to and, effectively, there would be  
22 two entities using that, both, you know, Old Co. and New Co.

23 And there's an issue on the split of the license  
24 that we don't have fully resolved. We have some language  
25 that we are working on, but I can't report that that's

1 resolved today.

2 Those issues are, frankly, sort of, you know, what  
3 we would typically see in this context; people wanting to  
4 make sure that if their contracts are being assumed, that  
5 they have the comfort that that's being taken care of. We  
6 think that those issues, obviously subject to the open point  
7 on Oracle, are essentially resolved.

8 That being said, where we are larger picture is  
9 that we negotiated in our offices until after midnight last  
10 night and picked it back up at 8:30 here this morning to try  
11 and figure out if we can resolve the committee's objections  
12 on a consensual basis. I think that we've made considerable  
13 progress. I'll refrain from using words like, almost there.  
14 I'll also refrain for my senior lenders of saying, ten more  
15 minutes, because they don't believe I have any credibility  
16 any longer when I say something's going to take ten more  
17 minutes. But we did -- we did approach Your Honor's staff a  
18 little while ago saying that we were still working.

19 There's a couple of updates that have come in, but  
20 we came back to sort of chat with Your Honor and let you  
21 know where we are. We did want to carry on, if we could,  
22 those conversations. We also wanted to get a sense of Your  
23 Honor's schedule that -- as we have before to impose upon  
24 you again, so that this way we can see whether or not if  
25 there's something that we could work with you or we could

1 take another break, hopefully conclude those discussions and  
2 see if we can reach a resolution.

3 We're prepared to go forward either way today,  
4 either with a resolution or without a resolution. And there  
5 will be people on board and there will be people who won't  
6 be. We have testimony that we're prepared to offer, if we  
7 can do that. The hope is that if we take a little bit more  
8 time we'll get done. I won't have (indiscernible), out of  
9 respect for Mr. Rutiger (ph) and his client, but I think --  
10 I'm looking at the clock now. I leave it to Your Honor to  
11 inform us as to what you would like to do today, so that  
12 this way we can sort of see if we can work around that.

13 THE COURT: The absent point from your  
14 presentation, so we're taught not to infer or assume, but  
15 there were no other bids at this juncture or --

16 MR. GRILLO: There have been no other qualified  
17 bids.

18 THE COURT: Qualified bids at this juncture.

19 MR. GRILLO: There have been no qualified bids at  
20 this juncture.

21 THE COURT: All right. Then in terms of the  
22 timing mechanics, I wanted to get a sense from you all of  
23 how -- how large the gulf, how deep the river, and I -- as  
24 most of the attorneys, I often will get we're 92 percent of  
25 the way there, we're 87 percent of the way there. Those are

1 somewhat meaningful, but somewhat not.

2 But if I just could, Mr. Carroll, from the  
3 committee's standpoint.

4 MR. CARROLL: Absolutely, Your Honor.

5 I don't know that I have a number and as you said,  
6 I'm not sure those are helpful. But I think we're down to  
7 certain limited issues at this point that in most respects  
8 don't relate to the buyer and in only limited respects  
9 relate to the debtor. They are much more related to the  
10 lenders and I think that's about it, right? I -- vis-à-vis  
11 the lenders and the committee, and they are relatively  
12 limited at this point, Your Honor.

13 THE COURT: All right.

14 In terms of the timing mechanics and that -- this  
15 is part of why I wanted to visit with you, we have a couple  
16 of different breakpoints for you all. One is I can adjourn  
17 you all till noon, give you another hour or so to see if you  
18 can resolve these -- these issues. I can adjourn you all  
19 till 3:00 because I have a 2:00 calendar and give you, you  
20 know, through between now and then to resolve them.

21 Either one of those is fine with the Court with  
22 the exception that if I bring you back at 3, and we're in a  
23 contested setting and there's going to be testimony to be  
24 given, we're going to have a fairly small window of time to  
25 get that testimony up and done. Again, as I said to Mr.

1 Grillo, as far as the U.S. Government is concerned, as far  
2 as this Court is aware, we're around at least for a few more  
3 days.

4 (Laughter)

5 THE COURT: But we also do have the Monday holiday  
6 approaching and I know that everyone is trying to move warp  
7 speed to get this done. So if we can get it up and finished  
8 and concluded today, that would be great. Now if that means  
9 bringing you back at noon, that's fine. If it means  
10 bringing you back at 3 after my 2:00 calendar, that's --  
11 that's fine as well. But just let me know which you think  
12 would be more -- more productive.

13 MR. CARROLL: Mr. Grillo and I just spoke briefly  
14 and we both think that noon would be better to do it, Your  
15 Honor.

16 THE COURT: All right.

17 All right. So then what I'll do is this. We will  
18 recess you all until 12:00 and we'll see where we are at  
19 that juncture. All right.

20 MR. CARROLL: Thank you, Your Honor.

21 THE COURT: All right. Very well.

22 MS. BLACK: Your Honor --

23 THE COURT: -- So we'll be adjourned on PCD until  
24 noon.

25 MS. BLACK: -- Christine Black --

1 THE CLERK: All rise.

2 MS. BLAC: -- Office of the United States --

3 (Recess taken at 10:58 a.m.; resume at 12:02 p.m.)

4 THE COURT: Please be seated.

5 All right. We'll go back on the record on  
6 Personal Communications Devices.

7 Mr. Grillo.

8 MR. GRILLO: Yes, Your Honor. Thank you.

9 Still formulating my thoughts as to what to say to  
10 the Court. I think that -- well, let me back up a little  
11 bit.

12 We had a deal that, you know, was our stalking  
13 horse bid. We have worked with the parties to try and  
14 conclude that deal. We have -- we now have two proposals,  
15 one is obviously, you know, the original deal and one that  
16 we're trying to finish up or that we've been working to  
17 finish up pretty much since yesterday.

18 I purposefully in the opening remarks this morning  
19 did not do anything to say we were close or offer Your Honor  
20 percentages because I -- I did not know where we were.

21 Up until a minute ago I felt like we were closer.  
22 I think the critical element for today -- I'm sorry. Is  
23 that my feedback?

24 THE COURT: No. That's -- they dropped the  
25 monitor.



1 Verizon is here, right, just in case?

2 (Laughter)

3 THE COURT: Or are we AT&T? I'm not sure.

4 MR. GRILLO: Well, maybe -- maybe we should start  
5 there, Your Honor.

6 I think to the extent that we wrap up a deal, I  
7 think those issues are resolved and to the extent that we  
8 are torturing others, I believe we've agreed on language --  
9 I'm looking at Mr. Curro (ph) and they can -- maybe what we  
10 should do is dispense with that portion of this first. In  
11 other words, the people who are less sort of mono-a-mono at  
12 this point, the Verizons, the AT&Ts and the Oracles, I would  
13 ask the Court maybe if we can get them to represent that we  
14 have agreement on those points should an order be entered  
15 and reserving their rights in the event that we don't get to  
16 the end today. But we have agreed on form of language that  
17 has been incorporated into the order and that people have  
18 signed off on?

19 UNIDENTIFIED SPEAKER: Correct. People have --  
20 everyone signed off on.

21 THE COURT: There was a --

22 MR. GRILLO: Okay.

23 THE COURT: There was a revised form of order  
24 uploaded yesterday that had some changes from the previous  
25 version and those changes seemed to reflect agreements with

1 service providers. Is that --

2 UNIDENTIFIED SPEAKER: That's --

3 MR. GRILLO: That's what we were referring to,  
4 Your Honor. So maybe what we can do is we can sort of --  
5 and then be kind to those who -- who maybe have other things  
6 to do, who are affected by just that portion, not that  
7 they're not affected by the overall deal, but they're not  
8 sort of the central players as far as that goes.

9 So if I could ask them --

10 THE COURT: All right.

11 MR. GRILLO: -- to sort of come up and represent  
12 where they believe we are.

13 THE COURT: The -- what the Court had received  
14 yesterday in both clean and redline had changes starting at  
15 paragraph 22 that related to AT&T, then it related to  
16 Sprint, then that related to Verizon. I think the Verizon  
17 section was the longest, so --

18 MR. GEORGE: Yes. Well, sorry about that, Judge.

19 Your Honor, I spoke to Counsel to the debtor and  
20 --

21 THE COURT: Just go ahead and restate your name.

22 MR. GEORGE: I'm sorry, Your Honor. Edmond  
23 George, Obermayer, Rebmann, Maxwell & Hippel on behalf of  
24 Verizon Wireless and Verizon Sourcing.

25 We do have an agreement with the debtor. I

1 haven't seen a redline of the order, although I saw counsel  
2 to the debtor write it in in hand. I trust that the things  
3 that he's represented to me that he's going to put into the  
4 order he's going to, and with that understanding I don't  
5 know if Your Honor wants me to go through the individual  
6 changes, but they're very slight. But as long as counsel  
7 makes the representation that what we discussed this morning  
8 will be included into the order, I think that's suffices.

9 THE COURT: So is that further changes to what was  
10 uploaded yesterday?

11 MR. GEORGE: Yes.

12 THE COURT: All right. Do you want to just make a  
13 brief statement as to what the further changes from  
14 yesterday --

15 MR. GEORGE: Yes, Your Honor.

16 THE COURT: -- relate to in substance?

17 MR. GEORGE: There was an issue about the cure  
18 number and we were trying to verify it, and we had inserted  
19 a footnote that that was a number that we thought was a  
20 correct one and we would do a reconciliation to the extent  
21 necessary.

22 We've now agreed on that number, and so the  
23 footnote that was indicated on page 22 of the order will be  
24 removed and that number that we put down as the cure, which  
25 is approximately \$14,800, will be the cure amount.

1           The other interlineations was made to language  
2       with respect to the release that was to be granted and we  
3       added some additional language at the end of paragraph  
4       number 24(iii), Your Honor. We interlineated the words at  
5       the end of that paragraph with respect to all pending and  
6       future orders.

7           And then the debtor already had inserted the  
8       language on the release that was going to be granted to  
9       Verizon and there really wasn't any change to that language.  
10      The debtor was just attempting to determine whether the  
11      other parties found that acceptable, and they've represented  
12      that it is.

13           So with those changes, Your Honor, Verizon is  
14      satisfied with the language with respect to cure.

15           THE COURT: All right. And, Mr. Grillo, those are  
16      changes consistent with what the debtor understands?

17           MR. GRILLO: They are. And I believe Mr.  
18      Wielebinski can make the same representations with respect  
19      to Quality One.

20           MR. WIELEBINSKI: Correct, Your Honor. We -- we  
21      have been a part of this process and we agree with those  
22      changes as the Court was advised.

23           THE COURT: All right. Thank you.

24           MR. GEORGE: With that, Your Honor, if we can take  
25      leave if Your Honor's going to have a hearing this afternoon

1 as I don't think we have to be here for it.

2 THE COURT: Well --

3 MR. GRILLO: We (indiscernible).

4 (Laughter)

5 THE COURT: Either way you all are welcome to  
6 stay, but also free to go.

7 MR. GEORGE: Well, thank you, Judge.

8 THE COURT: All right.

9 MR. FOX: Your Honor, Shawn Fox from McGuire Woods  
10 on behalf of Sprint.

11 As you saw, there's language that was inserted in  
12 the order. We've agreed with that language prior to it  
13 being inserted, so it's fine with us. I guess I would  
14 reserve our rights with respect to, I don't know, the change  
15 in the buyer or something along those lines. But beyond  
16 that, I don't think we have a problem.

17 MR. GRILLO: Your Honor, with respect to all of  
18 the service providers, to the extent that something really  
19 different happens, we would not hold anyone to that. That  
20 -- it's all for this deal, for this order should we get to  
21 that point.

22 THE COURT: All right. Very well.

23 MR. FOX: So with that, Your Honor, I have nothing  
24 else.

25 THE COURT: All right. Then same with Sprint, you

1 all are welcome to stay, but also free to go.

2 MR. FOX: Thank you, Your Honor.

3 THE COURT: Mr. Wielebinski, I take it the  
4 language is acceptable for the --

5 MR. WIELEBINSKI: It is acceptable, Your Honor.

6 THE COURT: -- proposed buyer.

7 MR. WIELEBINSKI: And on -- for all of the service  
8 providers, Your Honor, we've -- we've agreed -- they've  
9 essentially consented to the assumption and the assignment  
10 to the buyer, if it's approved, if the transaction is  
11 approved for 365 and we've satisfied them all with adequate  
12 assurance requirements as well.

13 THE COURT: All right. Thank you.

14 MR. DOSHI: Good afternoon, Your Honor. For the  
15 record Amish Doshi on behalf of Oracle America, Inc.

16 Your Honor probably doesn't see a paragraph for  
17 Oracle America. That's because we're still trying to  
18 finalize language on it. But for present purposes, just by  
19 way of background, Oracle had basically two broad  
20 objections. One related to the assumption and assignment of  
21 its agreements with the debtors and the second part related  
22 to the transition services agreement.

23 Since the filing of the objections we've had  
24 numerous communications with the stalking horse counsel as  
25 well as with the debtors and we are, I want to say close.

1 We just have to tweak some language. Mostly it relates to  
2 the transition services agreement.

3 But for the purposes of this hearing, to the  
4 extent the Court is inclined to enter an order, what we have  
5 agreed in this order is that the Oracle objections is going  
6 to be adjourned to a date to be determined prior to closing.  
7 And in that interim time period we're going to try and work  
8 out a solution regarding the outstanding issue.

9 I remain hopeful that we can get it resolved. If  
10 not, we'll come back on the Oracle issues before the  
11 closing, if necessary. I'm hopeful we won't have to. We'll  
12 probably try and work out some language with both parties.

13 But I also wanted to thank the staff -- talking  
14 horse. We've been in numerous discussions with them.

15 THE COURT: So he's got to stay, then, right? Is  
16 that --

17 (Laughter)

18 THE COURT: What I'm not certain of at this point  
19 is if closing -- capital IF closing -- is supposed to happen  
20 next week, if you all are contemplating adjourning for  
21 language and then coming back between now and then on the  
22 Oracle issue, I'm not sure that -- that we're going to be  
23 here or even there for that. Is it -- are you all  
24 contemplating the closing Tuesday or Wednesday of next week  
25 if there's a deal?

1 MR. GRILLO: I think we tentatively were looking  
2 at some time next week. I wanted to say the 18th?

3 MR. WIELEBINSKI: Thursday.

4 MR. GRILLO: Thursday, the 17th?

5 MR. WIELEBINSKI: Yes.

6 THE COURT: All right.

7 MR. GRILLO: Thursday, the 17th. I -- if I may,  
8 Your Honor, and for purposes of today, I think that with  
9 respect to Oracle we agree with counsel's representations of  
10 what the issues were. I think it more relates to the  
11 transition services agreement, which is not being approved  
12 today, you know, which is part of one of the closing  
13 documents or closing mechanics. And I think that --

14 THE COURT: All right.

15 MR. GRILLO: -- if I may, I think that's where --  
16 right where our -- where our issue is at.

17 THE COURT: That's the -- that's the licensing on  
18 the software issue?

19 MR. GRILLO: Yes. Correct. That's what I raised  
20 earlier as the licensing on the --

21 THE COURT: All right.

22 MR. GRILLO: -- software issue.

23 MR. DOSHI: Yeah. Basically, the issue is  
24 assuming it's assumed and assigned, Oracle would not approve  
25 of any sort of splitting or two different parties accessing



1 the same software at the same time period. So we're going  
2 to try and work out -- and that's correct. The objection  
3 really -- the one we're trying to resolve is relating to the  
4 transition services agreement and language relating to that.  
5 That's why we're adjourning it. And assuming we get it  
6 resolved, we can probably do some sort of a certificate of  
7 counsel or certificate of no objection relating to it with a  
8 stipulation, if it's necessary.

9 THE COURT: All right. So then in order to  
10 release Oracle, what we'll do is when -- again for capital I  
11 capital F purpose -- when there's a final proposed form of  
12 order for the sale transaction, to the extent that that  
13 requires Oracle input, if there's an Oracle contract being  
14 assigned over as part of the sale transaction, then I'll  
15 need certification that you all have signed off on that.

16 If this is an issue that is not needed to be  
17 resolved prior to closing, which is not how I'm hearing it,  
18 if you all don't get to an agreement, then I'll need to  
19 reconcile this for language purposes because I -- I doubt  
20 that we'll be able to get you back in for a hearing on that  
21 issue.

22 In other words we'll -- we'll sort it out. We may  
23 just do it without you.

24 MR. DOSHI: I'm happy to stay. I'm happy to stay  
25 if we need to. But what we have agreed -- assuming the

1 Court is okay with this, that in the sale order that -- the  
2 language says basically the Oracle objection is adjourned  
3 prior to closing. But if Your Honor is saying that in the  
4 event that -- which I don't anticipate -- if we can't work  
5 it out and if we have to come back to court, if I'm hearing  
6 this correctly because of the governmental issue --

7 THE COURT: Okay. Let me --

8 MR. DOSHI: -- we may not be able to come back to  
9 court.

10 THE COURT: Well, the coming back may just be the  
11 Court resolving the issue on the papers as opposed to being  
12 able to have a hearing and have you all come in. If we need  
13 to figure out a mechanic for that, we'll do that. But  
14 there's -- there's slim time between now and Wednesday of  
15 next week.

16 MR. GRILLO: What Your Honor -- what Your Honor  
17 has done for us in the past, if I may, is offered that to  
18 the extent that we have always had concerns about language,  
19 what Your Honor has said to us historically is you propose  
20 something, you propose something, and I'll make a decision,  
21 right? And I would sort of recommend that here in this  
22 instance.

23 We are certainly not going to steamroll them in  
24 any way. We're certainly not going to -- you know, if we --  
25 if we -- we all honestly believe we're going to get this

1 done. In the event that we're, you know, sort of -- we  
2 can't come to agreement on the language, I think we would  
3 serve something up to Your Honor and then maybe have a short  
4 telephonic or say here's what I've decided, you know, based  
5 on what you've all said to me at this point in time. If I  
6 could --

7 THE COURT: All right.

8 MR. GRILLO: -- propose that as a means of trying  
9 to resolve it.

10 THE COURT: That --

11 MR. DOSHI: Initially, I -- I think I'm okay as  
12 long as we get an opportunity to be heard because our --

13 MR. GRILLO: Absolutely.

14 MR. DOSHI: -- our issue relates to the actual  
15 split. It's not just language, but the issue is there  
16 cannot be any --

17 THE COURT: Issue of who's --

18 MR. DOSHI: -- splitting of --

19 THE COURT: -- who's paying for the license and  
20 whether or not there are two people sharing the license.

21 MR. DOSHI: Correct. So -- so the language has to  
22 represent -- I mean, we may fight about words, but the issue  
23 is we can't have shared access or splitting of the Oracle  
24 licenses between two parties. You know, pre it's whoever  
25 the debtors' parties are and post-assumption the buyer.

1           So, you know, all that is -- if that is the  
2           concept and if we're fighting about words, that's fine. But  
3           if we're disagree -- disagree on the concept of it, then,  
4           you know, we definitely need to be heard on it.

5           But --

6           MR. GRILLO: We don't disagree with that.

7           MR. DOSHI: Right. So --

8           THE COURT: All right.

9           MR. DOSHI: -- I just want the Court to be aware  
10          of the issue.

11          THE COURT: All right. Well, then, if we get to  
12          that point where there's still a disagreement prior to  
13          closing and it's not just commas and semicolons, it's who  
14          has to pay for what, then we'll just have to find a way to  
15          get you all on the telephone before closing so that that's  
16          not holding up all the rest, if we get to the all the rest  
17          part.

18          So with that said, again, same. You're free to  
19          stay, also free to go.

20          MR. DOSHI: That is -- that is perfectly  
21          acceptable and if acceptable, I will take leave if Your  
22          Honor has no objections.

23          THE COURT: All right. Very well.

24          MR. DOSHI: Thank you.

25          THE COURT: Do we have AT&T?

1 MR. GRILLO: AT&T, I think, was on the phone  
2 earlier, Your Honor.

3 MR. HAUT: It's still on the phone. Good  
4 morning, Your Honor. Mark --

5 THE COURT: With respect to AT&T --

6 MR. HAUT: -- Haut with --

7 THE COURT: -- then, can I get an --

8 MR. HAUT: -- Rose Fulbright --

9 THE COURT: -- announcement?

10 MR. HAUT: -- representing AT&T.

11 The debtors --

12 THE COURT: That is our service provider.

13 (Laughter)

14 MR. HAUT: -- and AT&T have agreed the language in  
15 the sale order at paragraph 22 --

16 THE COURT: All right. Let's -- we'll circle back  
17 to them.

18 MR. HAUT: -- that it resolves AT --

19 THE COURT: We may not have that telephonic --

20 THE CLERK: No. It's on -- they're supposed to be  
21 --

22 THE COURT: Are they here?

23 THE CLERK: -- on the phone. Is --

24 THE COURT: AT&T?

25 THE CLERK: Is AT&T --

1 MR. HAUT: Yes.

2 THE CLERK: -- on the phone?

3 MR. HAUT: Yes. I'm sorry. Were you having  
4 trouble hearing me?

5 THE COURT: Help.

6 MR. HAUT: Hello? Hello?

7 THE COURT: All right. Well, we'll --

8 THE CLERK: We'll have to --

9 MR. HAUT: Can you -- can you hear me?

10 THE COURT: Can we get a coverage map up on that  
11 screen?

12 (Laughter)

13 MR. HAUT: It's Mark Haut with AT&T.

14 THE COURT: All right. Well, then let's -- we'll  
15 circle back to that.

16 So what remains that divides us and I think we had  
17 some technical issues. I did want to give the U.S. Trustee  
18 a chance, also, to way in if needs be.

19 But where are we, then, now logistically on the  
20 rest of the deal?

21 MR. GRILLO: Sure.

22 Where we are at the moment, Your Honor, is again  
23 we have been sort of working on what was the original deal  
24 and then a modified deal. The modified deal, if it comes  
25 together, would obviously satisfy all the constituencies.

1 We have narrowed down the issues, I believe, considerably,  
2 but we have at least I would say two, maybe three tough  
3 issues to work out. It's -- what we definitely need to do  
4 in the debtors' view is one way or another we will need to  
5 proceed (indiscernible).

6 If we -- and I think the parties -- I'm trying to  
7 speak as straight as I can about it. I think parties would  
8 take different points of view as to which deal can get done.  
9 I think the debtors have a point of view. I think the --  
10 each of the secured lenders has a point of view, and I think  
11 the committee has a point of view. And those are not yet  
12 the same.

13 With that, I believe that, you know, if we -- you  
14 know, if we take a little bit more -- well, let me step  
15 back.

16 If Your Honor -- if we were forced to go forward  
17 with a hearing because we didn't reach agreement now, based  
18 on -- I know that Your Honor mentioned that you had a 2:00  
19 and that you asked us originally if we would come back at  
20 three. It's 12:19 now and my guess is that by 3:00 we're  
21 going to have to proceed with one way or another. The buyer  
22 has made it clear to us that we need to be able to push  
23 something over the line today. The deals are substantially  
24 similar, but there are material changes between the same  
25 parties. It's just a question of, you know, what the

1 consideration is and there's movements of certain pieces and  
2 things like that. But we do not have a final resolution.

3 We would like to proceed with something  
4 consensually. If we can't proceed, then essentially I think  
5 what Your Honor would see, to preview what would happen this  
6 afternoon, a question would be raised of which of two deals  
7 could go forward, the original stalking horse proposal or  
8 that deal as proposed to be modified, but not yet signed off  
9 on by everybody. And the question is whether or not which  
10 one can go forward. And I think the parties would take  
11 different views as to how that would -- how that would --  
12 how that would proceed.

13 So what I -- I think in terms of what we would --  
14 what would be required in the event that we did not reach an  
15 agreement, is there's obviously a material objection to the  
16 committee to which the debtors would need to respond. We're  
17 prepared to respond with testimony, if we need to do that.  
18 We would have one, perhaps two witnesses. We would expect  
19 on direct it would be, you know, 30 to 45 minutes. I think  
20 the parties would all want to make some degree of legal  
21 argument as to why we would need to make a choice between  
22 the two.

23 But I think either way there would be some -- the  
24 debtors would like to make a record to make sure that a deal  
25 can get done today. We think it's critically important for



1 all the reasons that Your Honor has heard in the hearings  
2 leading up to this one. I don't think anyone would disagree  
3 that time is -- is not this company's ally at this point,  
4 this debtors' ally and that we need to reach a resolution.

5 So I guess what I'm saying in an extraordinarily  
6 roundabout way is that if we come back at three, the thought  
7 is is that either we're going to have it wrapped up or we  
8 need to move forward with the hearing. And, I mean, I'll  
9 ask everyone else if, you know, Your Honor wants to solicit  
10 some input on that point.

11 THE COURT: All right. Thank you.

12 Mr. Carroll.

13 MR. CARROLL: Your Honor, before I comment, can I  
14 just have one second?

15 THE COURT: Sure.

16 (Pause)

17 THE CLERK: They should be on the phone, Judge.

18 (Pause)

19 MR. CARROLL: Your Honor, I think from our point  
20 of view it really comes down to the -- the two alternatives  
21 are the debtor can proceed with the agreement as originally  
22 proposed, subject to our lengthy objection with a lot of  
23 different issues, or the debtor can proceed with the  
24 agreement that has been revised subject to, I think, two  
25 very limited issues which it seems to me the Court could

1 very easily decide as legal issues without any testimony and  
2 without much fanfare.

3 So obviously I -- I hope that we could resolve it,  
4 but I think the right choice would be that the Court could  
5 consider the revised agreement. Certainly, if the Court  
6 decides you cannot approve that agreement, everybody has  
7 their rights and the debtor can come back and say, no, I  
8 want to go ahead with the first agreement.

9 But it would seem to me -- obviously the second  
10 agreement is better for the creditors so it's a self-serving  
11 statement. But I think from a logistics and efficiency  
12 standpoint, I think that makes a lot of sense.

13 THE COURT: All right. Ms. Black.

14 MS. BLACK: Good afternoon. Christine Black,  
15 Office of the United States Trustee.

16 The United States Trustee's reservation --

17 THE COURT: Hang on one --

18 MS. BLACK: -- about the APA -- can you hear me?

19 THE COURT: Hang on one second. We're still  
20 having -- all right. Can you --

21 MS. BLACK: The United States Trustee's  
22 reservation about the APA concerns certain of the payments  
23 going to Mr. Apling (ph) as part of the transition or the  
24 transactional expenses which, according to the APA, would be  
25 payable at the closing in cash. It would -- it also

1 constitutes an approval of the administrative expenses to do  
2 that.

3 Your Honor, this is a 50 page APA. Buried in that  
4 APA is the approval of certain administrative expenses which  
5 we all know have been subject to changing legislation and,  
6 in fact, in certain instances payments to insiders are  
7 prohibited.

8 The United States Trustee is concerned about the  
9 lack of adequate due process and would submit to the Court  
10 that it would be appropriate that either there be a full  
11 motion or a separate motion seeking the approval of the  
12 payments to Mr. Apling or, in lieu of that, that any money  
13 that would be payable to Mr. Apling be escrowed pending a  
14 full hearing so that all the parties can be really familiar  
15 with what is going to be paid to Mr. Apling and, under the  
16 circumstances, that he's getting that payment.

17 I will note that the trust -- the committee's  
18 application or opposition papers were filed under seal.  
19 Certain of the creditors were not apprised of the terms and  
20 contents of that document and agreement. And under the  
21 circumstances it's the position of the Office of the United  
22 States Trustee that authorizing that payment at closing is  
23 inappropriate at this time.

24 MR. GRILLO: TO be clear, Your Honor, to address  
25 the United States Trustee's concern, there -- there are

1 amounts that would be reserved. We have always intended to  
2 come to the Court for approval before those amounts are in  
3 any way paid. They are subject to -- in our view subject to  
4 court approval.

5 What we've been doing is obviously there is an  
6 allocation issue in terms of how things are allocated. But  
7 the bottom line is it -- what we were hoping to do is to get  
8 agreements in principal from the parties as to the  
9 allocation and then come back to the Bankruptcy Court for  
10 approval.

11 So there would be no money paid absent a further  
12 motion to the Court.

13 So to the U.S. Trustee's point, we understand the  
14 concern. The concern was raised by the committee in its  
15 papers because there are allocation issues. We're not  
16 prepared to disburse that money today absent a full  
17 agreement on notice to the parties in the appropriate  
18 matter.

19 So to address the U.S. Trustee's concern.

20 THE COURT: All right. So -- were you able to hear  
21 that part, Ms. Black? I know we're having some technical  
22 issues. Were you able to hear Mr. Grillo's statement?  
23 Essentially, the -- any money to Mr. Apling would be  
24 reserved and determined by the Court on notice to parties in  
25 interest before disbursed.

1 MS. BLACK: That's -- that's fine, Your Honor.

2 Under the circumstances we just requested a full motion so  
3 that everyone could be apprised.

4 Thank you, Mr. Grillo and the Court.

5 THE COURT: All right. Very well.

6 So then why don't we -- why don't we proceed this  
7 way? I'm going to -- I'll recess you all. Let's -- let's  
8 have you start filing back in about 2:30 -- oh, I'm sorry.  
9 Mr. Wielebinski, did you --

10 MR. GRILLO: I -- I wouldn't -- I think the lender  
11 -- the two sets of lenders wanted to be heard as well and  
12 Mr. Wielebinski, if I may, Your Honor.

13 THE COURT: All right. Certainly.

14 Mr. Wielebinski.

15 MR. WIELEBINSKI: Thank you, Your Honor.

16 Your Honor, we have been through a very difficult,  
17 challenging, painstaking process. I've done numerous of  
18 these sales. This one has been pretty brutal, and I don't  
19 think anybody would object to that, that characterization.

20 We believe we need to move forward. We know the  
21 Court's been incredibly patient. I would urge Mr. Grillo to  
22 urge the Court to proceed now so that we can get as much  
23 testimony in as possible and hopefully get a ruling today,  
24 one way or the other. This is costing my client a lot of  
25 money and we need to get it to -- well, everybody's sake,

1 including for the employees that are out there wondering  
2 what's going on.

3 I have a suggestion, Your Honor, and the  
4 suggestion is this, because I heard Mr. Schuyler -- I heard  
5 Schuyler say that there are just a couple of issues out  
6 there. My suggestion, Your Honor, is --

7 THE COURT: Well, the objection started with four  
8 and now there are three, so we're -- we're making progress.

9 (Laughter)

10 MR. WIELEBINSKI: It's 12:29. Give us 30 minutes  
11 and let's see if we can come in with an agreement. If we  
12 can't, I would say let's start at 1:00 and if we have to  
13 take a break, but we've got witnesses. We know we're going  
14 to have cross-examination. It's going to be a long day in  
15 order to get the entire hearing.

16 I've -- I've sat through those discussions out  
17 there, or actually I've stood through those discussions and  
18 I think we are close, but I think if the parties are going  
19 to do it, they're going to do it now. And otherwise I don't  
20 think there's going to be two options, Your Honor. We're  
21 going to say our option is the first option and we're going  
22 forward it and any negotiations we've had, that's off the  
23 table.

24 So that's my suggestion, Your Honor.

25 THE COURT: All right.

1 Mr. Glerum.

2 MR. GLERUM: Thank you, Your Honor.

3 Briefly, there are pressing time issues here.

4 There is a frustrated buyer and our loan is slowly expiring.

5 I, too, have sat through hours of negotiations. I

6 was preparing -- and the second deal is better, but

7 everybody's not on board with it. And I think that until

8 everyone is on board with it, that it is incumbent upon Mr.

9 Grillo to proceed with the first deal, the original deal

10 that he filed with the Court and get it approved.

11 It -- I was going to suggest that he start right

12 away. I defer to counsel for the buyer. If he thinks

13 another 30 minutes would be useful, then fine. We'll have

14 another 30 minutes. But we have to get this deal approved

15 today and that Mr. Grillo's ready to go forward. And I

16 would submit that if the 30 minutes doesn't work that Mr.

17 Grillo proceed with the -- to get approval of the motion

18 that he has filed and the asset purchase agreement that he

19 has filed.

20 Thank you.

21 THE COURT: Thank you.

22 Mr. Salzberg and then, I take it, Mr. Goldberg.

23 MR. SALZBERG: Your Honor, Mark Salzberg on behalf

24 of Pine Bridge.

25 We would agree with counsel's statements just made

1       that -- I never say it -- never say enough is enough when  
2       you're talking. Maybe another 15 or 30 minutes would do it.  
3       I don't know. We've tried for many, many hours. But, you  
4       know, I'm willing to continue talking for another 15, 20, 30  
5       minutes. If not, I think we come back in and I think  
6       counsel's right; that the debtor should put on the original  
7       transaction for approval.

8               Thank you, Your Honor.

9               THE COURT: All right. Thank you.

10              MR. GOLDBERG: Good afternoon, Your Honor. Adam  
11       Goldberg of Latham & Watkins on behalf of DLJ Investment  
12       Partners.

13              We're working closely with the other parties to  
14       reach an agreement and like the other counsels that have  
15       spoken to you, I'm hopeful that we can reach something in  
16       the next 30 minutes, but it depends on the cooperation from  
17       everyone.

18              THE COURT: All right.

19              MR. GOLDBERG: Thanks.

20              THE COURT: Thank you.

21              And I -- do we have Mr. Haut back now on the phone  
22       for AT&T?

23              MR. HAUT: Yes. Can everyone hear me now? Hello?

24              THE COURT: All right.

25              MR. HAUT: Hello?



1 THE COURT: All right. So then what we'll do is  
2 this. We'll go ahead and recess until 1:00. We're going to  
3 have --

4 MR. HAUT: Can anyone hear me?

5 THE COURT: Mr. Haut?

6 THE CLERK: Judge, that's why.

7 MR. HAUT: Yes. I'm here. Can -- can you hear  
8 me?

9 THE COURT: We -- we can hear you now.

10 (Laughter)

11 MR. HAUT: Oh, okay. All right. I'm glad.

12 UNIDENTIFIED SPEAKER: Wrong carrier, Your Honor.

13 MR. HAUT: Sorry for the technical difficulties.

14 THE COURT: With apologies to Verizon.

15 (Laughter)

16 THE COURT: The -- when last we had the revised  
17 proposed form of sale order open there were iterations in  
18 paragraph 22 that related to AT&T and the Court's question  
19 was whether those resolved the objection that AT&T had filed  
20 -- limited objection that AT&T had filed.

21 MR. HAUT: That is correct, Your Honor. The  
22 language in paragraph 22 is an agreement between all the  
23 parties that resolves AT&T's objection. We, as the same  
24 with most parties, reserve our rights to the extent there's  
25 a different buyer or that paragraph ends up needing to be

1 changed. But it does reflect our agreement and resolves our  
2 objection.

3 THE COURT: All right.

4 Mr. Grillo, Mr. Wielebinski?

5 MR. WIELEBINSKI: That's correct, Your Honor.

6 MR. GRILLO: That is correct, Your Honor.

7 THE COURT: Okay. Thank you, Mr. Haut. You are  
8 welcome to stay on or ring off or do both.

9 MR. HAUT: Thank you, Your Honor. We plan on  
10 listening to the sale hearing so we can report back the  
11 results --

12 THE COURT: All right.

13 MR. HAUT: -- to our client.

14 THE COURT: All right. So then mechanically what  
15 we'll do is this. We'll -- we may need to have a personnel  
16 change inside the court. I'll bring you all back in at  
17 1:15. I'll start then by taking either the announcement of  
18 the agreement or a proffer of the testimony of the first  
19 witness for the debtor.

20 Under the time constraints, it seems to the Court  
21 appropriate to go ahead and take the direct testimony by  
22 proffer. That will obviously save us some time in the  
23 process. And then open that witness or those witnesses for  
24 cross-examination before we break for our 2:00 calendar. So  
25 you'll have a natural second break at 2:00. So if you don't

1 get it completely done by 1:15 for some reason, there's --  
2 there will be more time to chat out in the hallway in  
3 between.

4 For the Court's benefit, though, it seems that at  
5 least on the present -- can you drop that? Can you lower  
6 that?

7 On the present proposed sale as it currently  
8 exists, as far as what the Court is aware of, there are  
9 three -- by category there are three objections remaining  
10 from the committee: One is what happens to the estate's  
11 causes of action, including the Chapter 5's; the second is  
12 what happens to the notes and guarantees to go to the second  
13 lien lenders; and the third is how do we -- how do we  
14 calculate how much the buyer is paying, what happens to the  
15 estate's cash as of closing. Those generically seem to be  
16 the three issues, at least, that remain from the objection  
17 that are subject of discussion.

18 Mr. Carroll.

19 MR. CARROLL: I think, Your Honor, the last one  
20 encompasses the payment to Mr. Apling.

21 THE COURT: Well, the -- from the Court's vantage  
22 point, the Apling issue is presently moot because while a  
23 certain amount of money may be set aside, none of it is  
24 going to be disbursed until there's a hearing on full  
25 notice. So that's not something I need to resolve today.

1 MR. CARROLL: I'm not sure that's correct, Your  
2 Honor, because I -- I do believe the sale provides for it in  
3 certain ways as it stands now or maybe it doesn't provide  
4 for it, and the way it is structured we don't believe is  
5 appropriate.

6 THE COURT: Well --

7 MR. CARROLL: I guess I can make it simpler, Your  
8 Honor. The way the original APA is structured, the buyer  
9 only pays the money if Mr. Apling is entitled to it and we  
10 don't believe that the Court can approve that type of a term  
11 in the APA.

12 THE COURT: Well, whatever the calculated math  
13 would be, because I sealed the terms of the agreement, so to  
14 speak generically about it, whatever the math would be to  
15 Mr. Apling, that amount of money would need to be paid at  
16 closing and escrowed and then I'll figure out who gets it  
17 later as opposed to that amount of money being withheld from  
18 the closing and then go ask Quality One for it.

19 MR. CARROLL: And that's exactly our position,  
20 Your Honor, and that if Your Honor determines Mr. Apling is  
21 not entitled to it, the estate should be retaining it.

22 THE COURT: Mr. Grillo, is there a -- does the  
23 debtor have a different view on that because when I thought  
24 that issue was moot before, that's what I contemplated was  
25 going to happen.

1 MR. GRILLO: So -- so, Your Honor, under the  
2 original deal the amount is viewed as what we called the  
3 transaction expense. Okay. The transaction expenses were  
4 being picked up under the original deal by Quality One to  
5 pay. If that transaction is approved, whether or not Mr.  
6 Apling gets the money, it either goes -- either he gets paid  
7 because the Court has authorized its payment to him, or it  
8 goes back to Quality One.

9 One of the -- one of the terms of the modified  
10 deal is that -- and that was a way of getting, frankly, the  
11 buyer to pick up a certain expense outside the purchase  
12 price that would otherwise be a cost to the estate or to its  
13 creditors.

14 What the -- what was ultimately agreed to in the  
15 modified proposal was the funds come into the estate to be  
16 determined as to how they would be resolved after the fact.

17 So there's a difference in treatment. I think  
18 Your Honor can still rule on it at the appropriate time and  
19 I don't think it -- you know, if we're going forward with  
20 the original deal, then, frankly, you know, the estate could  
21 come up short, but that's just the nature of what was  
22 negotiated in the first instance.

23 If the second deal actually gets approved and goes  
24 forward, then, yes, there's different treatment for those  
25 funds. Either way, though, the bottom line is Your Honor

1 can rule on that and if it's something, then, that has to be  
2 posted by Quality One because it's due and owing and Your  
3 Honor approved the original deal, then that's how it is. If  
4 we get agreement on the second deal, then the money comes in  
5 and it either goes to Mr. Apling or it goes someplace else  
6 in the estate.

7 But, again, it doesn't need to be resolved today  
8 because the bottom line is is that it's either going to --  
9 if we have to go forward with the first deal because we  
10 don't believe we have agreement, then, you know, then  
11 admittedly the estate doesn't come out the same way. That  
12 was the function of the negotiations, you know, for a whole  
13 variety of broader issues.

14 THE COURT: All right. So there are still four  
15 issues for discussion out in the hallway, then.

16 MR. CARROLL: And there's one more, Your Honor,  
17 and that is not really in discussion out in the hallway, but  
18 if we are going forward with the original deal, our  
19 objection that the proposed -- the APA should not be  
20 approved at all because the estate comes out better in a  
21 liquidation.

22 THE COURT: All right.

23 MR. CARROLL: And that's sort of where I got, Your  
24 Honor, my proposal before that it's a lot easier to go ahead  
25 with two limited legal issues on the amended deal than it is

1 to start from scratch on that deal.

2 THE COURT: All right. Well, then, let's see  
3 where you all are come 1:15 and we'll be back.

4 MR. CARROLL: Thank you, Your Honor.

5 THE COURT: We'll be in recess until 1:15 on PCD.

6 THE CLERK: All rise.

7 (Recess taken at 12:40 p.m.; resumed at 1:19 p.m.)

8 THE COURT: Thank you. Please be seated.

9 Mr. Grillo.

10 MR. GRILLO: Yes. Thank you, Your Honor.

11 I am pleased to report to the Court that I  
12 believe, subject to everyone signing off, I believe we have  
13 an agreement that's been reached.

14 THE COURT: All right.

15 MR. GRILLO: And if I'll take a few minutes and  
16 sort of convey that into the record and for the benefit of  
17 Your Honor, the other parties will inevitably correct  
18 portions of it, but I -- but I think we'll -- I think we'll  
19 get there.

20 Part of it -- and, essentially, what this amounts  
21 to is a conclusion. You heard me speak earlier, Your Honor,  
22 of the original deal and a modified deal. This is  
23 essentially the conclusion of the modified deal, and we  
24 think all parties are on board.

25 THE COURT: Okay.

1 MR. GRILLO: And it becomes fully consensual on  
2 that basis.

3 THE COURT: Okay.

4 MR. GRILLO: So if I may, Your Honor?

5 THE COURT: Yes.

6 MR. GRILLO: The stalking horse APA with Quality  
7 One and its affiliate is approved by all of the undersigned  
8 parties as we're going to amend now as part of the record  
9 and will ultimately be amended as part of the documents.  
10 There will be no other bids taken. The auction is formally  
11 closed. And as a result this is the highest and best offer  
12 and the parties have agreed that that is, in fact, the case.

13 There are several elements of the deal that are  
14 going to change. The first is there's an administrative  
15 expense claims reserve account that was budgeted at \$3  
16 million that will be fixed at \$3 million and will not be  
17 subject to reduction or offset and will be available to  
18 satisfy administrative expenses. And to the extent that  
19 there is a balance over what administrative expenses are  
20 required, that that will remain part of the estate and be  
21 used by the unsecured creditors.

22 THE COURT: Is there any -- just on that narrow  
23 issue, is there any disagreement about who is in that  
24 reserve and who is out of that reserve?

25 MR. GRILLO: There's no -- as far as the budget



1 items that go for that, there is -- there is -- we think the  
2 budget items that it will cover are relatively modest. We  
3 expect that there will be a substantial portion that will be  
4 left for the unsecureds.

5 But part of it, Your Honor, is to address  
6 unsecured -- actually, administrative claims that may also  
7 arise. We haven't set an administrative claims bar date  
8 yet. There are always things that come up, so that was sort  
9 of the reserve fund to make sure -- to address one of the  
10 objections that we would ultimately not be administratively  
11 insolvent.

12 THE COURT: All right.

13 MR. GRILLO: I should also note that, you know,  
14 for the avoidance of doubt the administrative claims reserve  
15 amount shall not be effected or impacted by the tests and  
16 conditions in Section 4.6 of the stalking horse APA.

17 What that means, Your Honor, is there was a test  
18 with respect to certain payments and eligible receivable  
19 thresholds that have to be met. I think the parties are  
20 comfortable that those tests will be passed either way, and  
21 that's no longer a limitation or requirement on the payment  
22 of the \$3 million.

23 With respect to the transaction expenses -- and  
24 this was the element of the transaction that we mentioned  
25 earlier with respect to the Apling payment, the parties have

1     agreed in principle to the terms of a motion to be proposed  
2     on the allocation of the \$4.8 million to be paid in the  
3     aggregate by the purchasers, and that motion will be  
4     presented to the Court before any payments are made.

5             And pending -- pending further order to the Court,  
6     those amounts will not be paid out, but they will be paid in  
7     by the borrower -- excuse me -- by the purchaser in three  
8     installments: \$3 million at closing; \$1 million within 90  
9     days of the closing date; and \$800,000 to be paid within 150  
10    days of the closing date.

11            And for the avoidance of doubt, if any portion of  
12    the transaction expenses is not due and payable to the  
13    parties as set forth or the Court doesn't approve a full  
14    amount expending all of that, that will remain in the  
15    benefit -- will remain in the debtors' estates. So the  
16    funds do not go back.

17            The next item is that at closing the purchasers  
18    will issue a single promissory note to the debtors' estate  
19    for the benefit of the unsecured creditors in the aggregate  
20    amount of \$2 million. For the avoidance of doubt, other  
21    than the estate note the purchasers will not be required to  
22    issue any other promissory notes for the benefit of the  
23    unsecured creditors at closing.

24            If Your Honor recalls, in connection with the  
25    resolution of the bid procedures motion, there was the

1 agreement to contribute a note to the estate for the amount  
2 of \$750,000. This \$2 million note replaces the \$750,000  
3 note and effectively supersedes it at this point. So  
4 there's a change in consideration in this regard of \$1.25  
5 million.

6 The estate note shall be due and payable on the  
7 second anniversary of the closing date and shall have  
8 substantially the same terms as the promissory notes issued  
9 by the purchaser to Pine Bridge provided that the note shall  
10 be unsecured and guaranteed on a subordinated basis by  
11 Quality One. The note shall be pari passu in right of  
12 payment of principal at maturity and interest and in right  
13 of acceleration to the promissory notes issued by the buyer  
14 to Pine Bridge and subordinated in right of payment to the  
15 purchaser's lender and the CS term lenders, provided further  
16 that it shall be subordinated to all secured lenders in  
17 respect of payments from collateral and such notes shall not  
18 entitle any holder of that note to any right of prepayment  
19 or any rights in respect of any collateral securing the Pine  
20 Bridge notes and security agreement, the CS notes or  
21 security agreement, or any rights to approve sale of  
22 inventory or amendments.

23 (Pause)

24 MR. WIELEBINSKI: Your Honor, may I approach? We  
25 have a draft stipulation and just for the ease of you

1 listening to this and maybe seeing it in writing it might be  
2 easier --

3 THE COURT: That's fine.

4 MR. WIELEBINSKI: -- if you --

5 THE COURT: That's fine. If you want to hand that  
6 on up.

7 MR. WIELEBINSKI: It's not signed, Your Honor.

8 (Pause)

9 THE COURT: And this stipulation addresses the  
10 note terms?

11 MR. GRILLO: This stip -- these are the items that  
12 I have read into the record thus far. I'm actually at Item  
13 Number 5, Your Honor, so we can follow along.

14 THE COURT: All right.

15 MR. GRILLO: You have Mr. Wielebinski's copy,  
16 that's why it's all folded.

17 (Laughter)

18 MR. GRILLO: So following along, Item 5 was that  
19 the litigation claims, other than those that relate to  
20 purchase assets, purchase contracts and assumed liabilities  
21 shall be excluded assets.

22 What that effectively means is that to the extent  
23 there's an issue on a receivable that's been sold, they  
24 would -- they would get -- Quality One, that is -- the  
25 benefit of the claim in connection with a receivable.

1           What it doesn't include, as the next sentence  
2 suggests for avoidance of doubt, is the rights, claims,  
3 causes of action of the sellers, i.e. the estate's against  
4 Phillip Christopher (ph), directly or indirectly, whether  
5 arising before or after the closing date, and then there's a  
6 description of the action; any avoidance or other actions  
7 arising under Chapter 5 of the Bankruptcy Code; any claims  
8 and causes of action against the Tagi (ph) High Technologies  
9 America, Inc. or any of its affiliates; claims and causes of  
10 actions with respect to present and former directors and  
11 officers, including anything that is covered by insurance;  
12 any direct rights to cover any -- recover under any D&O  
13 liability insurance for present and former directors; and  
14 any claims and causes of action against the existing  
15 lenders, particularly the second lien lenders.

16           And --

17           THE COURT: So even -- even if a -- even if a  
18 cause of action associated to an assigned asset goes over  
19 like an account receivable, if there's a Chapter 5 related  
20 to that same entity, the Chapter 5 stays with the estate?

21           MR. GRILLO: Correct. The Chapter 5 stays with  
22 the estate.

23           THE COURT: All right.

24           MR. GRILLO: And the debtors have agreed to assign  
25 its rights to bring any such actions to the committee as

1 part of this process.

2 THE COURT: All right.

3 MR. GRILLO: Next, Your Honor, there is a concept  
4 in the agreement called the wind down payment. That was  
5 essentially to assist in the funding of a wrap up of the  
6 Chapter 11 cases, putting together a plan and the like.  
7 That amount was increased from \$250,000 to \$500,000.

8 THE COURT: All right.

9 MR. GRILLO: And then, Your Honor, as part of all  
10 of this, the purchasers wanted to make clear -- Quality One,  
11 that is, that they would be released from any claims and  
12 causes of action as part of this process. And so the  
13 parties agreed that the purchaser should have a full and  
14 complete release. It obviously does not release any claims  
15 that would arise under the stalking horse APA or the  
16 obligations there under. So everything separate and apart  
17 from the agreement would be released.

18 There is a provision which is the old paragraph 9.  
19 The paragraph that's 8, Your Honor, goes away because we've  
20 resolved the remaining objections. That was in the event  
21 that we didn't have a full and complete deal and proceeded.  
22 But in paragraph 9, in the event that the committee asserts  
23 any causes of action against any third party on behalf of  
24 the debtors' estates, and they require the assistance of the  
25 purchasers as obviously the purchasers will succeed to all

1 of the books and records, the committee and the purchaser  
2 shall agree on the costs associated with such assistance and  
3 they shall be paid by the committee prior to the rendering  
4 of any assistance.

5 Then, also, lastly, as a point of clarity, the  
6 professional fees account which was set up as part of the  
7 DIP to make sure that the professional fees in the Chapter  
8 11 cases were paid is clearly an excluded asset because that  
9 was really just a cash account and they wouldn't be  
10 purchasing that as part of the transaction.

11 What is -- what is not in the stipulation itself,  
12 Your Honor, are provisions that relate to the second lien  
13 lenders. And I would like to take a moment and go through  
14 those.

15 THE COURT: All right.

16 MR. GRILLO: So in order to provide security with  
17 respect to any potential claim that may be brought against  
18 the lenders, as I understand it both second lien lenders  
19 have agreed to hold cash proceeds from the pay downs that  
20 they receive under their notes in segregated accounts at  
21 each second lien lender.

22 So, for example, DLJ on the one hand, if it  
23 receives proceeds of their collateral as part of the deal --  
24 as part of the ultimate pay down of those notes, they would  
25 hold the -- those proceeds in segregated accounts with the

1 names of accounts -- with the names of those accounts to  
2 include a reference to PCD, effectively allowing the  
3 parties, in the event of a judgment, to have those  
4 earmarked.

5 They will represent today that there are no liens  
6 on the accounts or the funds -- excuse me -- on the -- or on  
7 the investment funds themselves today. So the lenders, by  
8 way of background, are investment funds that are managed on  
9 the one hand by CS DLJ and on the other hand by Pine Bridge  
10 investment, so they're dedicated investment funds. There  
11 are presently no liens on the funds where there will be no  
12 liens on the account that's set up to hold the proceeds as  
13 of today.

14 They further agree that to the extent that any  
15 third party looks to take action against the account,  
16 against the funds and thus seeking a lien on those accounts  
17 where the proceeds go while the actions are pending, that  
18 they will provide prompt notice to the committee of any such  
19 action.

20 This will -- this arrangement will remain in place  
21 until the earliest of (1) denial of standing of the  
22 committee to bring any actions under the Second Circuit case  
23 law in STN (sic); or (2) the denial or dismissal of all  
24 claims.

25 And this third element which varies between the



1 two as a matter of function of when they will receive  
2 proceeds because under the waterfall the DLJ funds get paid  
3 first and the PB funds get paid second. In the case of the  
4 DLJ funds, this arrangement will last for one year. The  
5 committee may seek to extend that period and DLJ reserves  
6 the right to oppose any extension.

7 And in the case of Pine Bridge, they agree to  
8 start a one-year period from the point in time that they  
9 start to receive proceeds. So it's the same setup. It just  
10 starts later because under the proposal they don't receive  
11 proceeds until after -- yes.

12 MR. CARROLL: It's actually from the point in time  
13 when they receive their last proceeds, Your Honor, Pine  
14 Bridge. The one year period starts from the time they  
15 receive --

16 THE COURT: Starts now, but it expires one year  
17 from the last payment of --

18 MR. CARROLL: Exactly.

19 THE COURT: -- Pine Bridge.

20 MR. GRILLO: Mark, you got --

21 MR. SALZBERG: Yeah. That's --

22 THE COURT: Yeah. We'll go through the --

23 MR. GRILLO: Okay. I just --

24 THE COURT: -- the whole series of --

25 MR. GRILLO: No. I understand. I just wanted to

1 make sure. That was the one point that I wasn't sure I had  
2 right anyway.

3 Okay. With respect to the fees and expenses  
4 incurred by the second lien lenders, given the forms of the  
5 notes they have typical provisions that say that the  
6 borrower, in this case Quality One and its affiliate, would  
7 typically be liable for enforcement actions or any actions  
8 taken against the collateral, sort of typical -- typical  
9 repayment or reimbursement provisions.

10 What the parties agree to make clear is that  
11 Quality One is not liable for fees and expenses that arise  
12 against either DLJ or PB in connection with what we'll  
13 generically refer to as this bankruptcy litigation, so the  
14 enforcement claims and things like that. Their obligation  
15 to reimburse effectively starts for post-closing events that  
16 occur.

17 So in other words, because you've got a -- because  
18 you've got the same lenders financing both deals, we -- the  
19 parties wanted to make it clear that Quality One is not  
20 responsible for what I've generically called all of this,  
21 everything that we're kind of doing here among the parties.

22 But in the -- in the future if there's action  
23 against either the second lien holders arising out of this  
24 bankruptcy settlement, they don't get to look to Quality One  
25 for that or do they?

1 MR. GRILLO: That's correct.

2 THE COURT: They do not.

3 MR. GRILLO: They do not.

4 (Pause)

5 MS. LAMANNA: Your Honor, this is Kathleen Lamanna  
6 of --

7 MR. GRILLO: The parties did agree that --

8 MS. LAMANNA: -- Shipman & Goodwin for U.S. Bank.

9 MR. GRILLO: -- notwithstanding the hold  
10 provisions --

11 MS. LAMANNA: I have a request for a point of  
12 clarification. I'll just --

13 MR. GRILLO: -- that we outlined earlier --

14 MS. LAMANNA: -- wait until the end or --

15 MR. GRILLO: -- that --

16 MS. LAMANNA: -- do it now. I wasn't sure what  
17 you preferred.

18 MR. GRILLO: -- the two sets of lenders will be  
19 able to pay from the proceeds of the collateral as they are  
20 received, subject to certain distinctions that I'll make in  
21 a second, fees and expenses incurred in the bankruptcy  
22 litigation. So, effectively, out of their pockets, but out  
23 of their pockets from the proceeds of the collateral that  
24 they receive.

25 So to the extent, for example, that \$5 million of

1 the collateral is sold during the course of the bankruptcy,  
2 the permitted use of those funds or the permitted release of  
3 those funds which DLJ receives first will be to cover legal  
4 expenses that they incur as part of the litigation that  
5 takes place in the context of the bankruptcy.

6 In order to accommodate PB's ability to do that as  
7 well, because it is junior in the priority of the waterfall  
8 with respect to proceeds of collateral, Quality One has  
9 agreed to make a payment with respect to those fees in six  
10 months effectively in the form of a graduated prepayment  
11 provide -- up to a million dollars to cover those fees  
12 provided that no event of default has occurred and that DLJ  
13 has received at least one-half of the amount that's due  
14 under its note.

15 So we expect the face value of that note to be  
16 approximately \$36.3 million. So in order for them to upset  
17 the existing priority, which would have DLJ coming first and  
18 Pine Bridge coming second, Quality One has agreed to make,  
19 with the permission of DLJ, payments in six months up to a  
20 million dollars reflecting reimbursement for any amounts  
21 paid to cover litigation expense coming out here.

22 So, effectively, both parties within that first  
23 six-month period will be able to pay their own litigation  
24 expenses from the proceeds of the collateral.

25 MS. LAMANNA: Your Honor, I apologize. This is

1 Kathleen Lamanna on the line. Can you hear me?

2 THE COURT: We can hear you.

3 MS. LAMANNA: Thank you very much.

4 I'm sorry. Just by way of a point of  
5 clarification -- and I can do this now or wait till the end,  
6 depending on Your Honor's preference. But I wanted to just  
7 request a clarification with respect to the treatment of the  
8 second lien lender fees and expenses.

9 THE COURT: Well, we're --

10 MR. GRILLO: Yes.

11 THE COURT: I don't think we're fully through it  
12 yet, so let -- let me get all of the terms in and then I'm  
13 going to ask for each of the respective part -- well, who is  
14 it that you represent?

15 MR. GRILLO: U.S. Bank.

16 MS. LAMANNA: I'm sorry. I'm --

17 THE COURT: Oh, U.S. Bank.

18 MS. LAMANNA: -- sorry. I'm representing U.S.

19 Bank which is the administrative agent for the second lien  
20 lenders.

21 THE COURT: All right.

22 MS. LAMANNA: That's fine, Your Honor. I will --  
23 I will hold off.

24 THE COURT: Are you asking Mr. Grillo to go back  
25 through all of it, or was there a particular point that

1 wasn't --

2 MS. LAMANNA: It's a point of clarification, I  
3 believe, Your Honor, with respect to the discussion on the  
4 waterfall and payments to DLJ and Pine Bridge, just with  
5 respect to the administrative agent's fees and expenses.

6 MR. GRILLO: Can I have one moment to talk to the  
7 second lien lenders, Your Honor?

8 THE COURT: Yes. Go ahead.

9 (Pause)

10 MR. GRILLO: Your Honor, by way of background,  
11 U.S. Bank is the agent with respect to the second lien, so  
12 we assume that there are agency fees and the like that we  
13 assume counsel is inquiring about.

14 The arrangements that we're speaking about have to  
15 do with sort of the -- with the post -- with the new notes  
16 to the new second lien lenders. I do not believe that  
17 either of the new lenders -- of the second lien lenders is  
18 expecting for them to continue to serve, and it's without  
19 prejudice to their rights, whatever they may be, to collect  
20 their fees for their existing services during the course of  
21 the bankruptcy case.

22 And I'll ask the parties --

23 MS. LAMANNA: Your Honor, that's very helpful.

24 And, yes, my understanding is that the very modest fees and  
25 expenses of the administrative agent are being paid pursuant

1 to the prior orders of the court. That hasn't happened yet  
2 and that's why I just want to make sure that everyone's on  
3 the same page with respect to the releases being sought, et  
4 cetera (indiscernible) in any way release the administrative  
5 agent's rights with respect to those fees and expenses.

6 So I apologize for the interruption, but I felt  
7 that it was important.

8 THE COURT: All right. Thank you.

9 Mr. Grillo.

10 MR. GRILLO: Yes. That's my understanding, Your  
11 Honor, and I know you're going to call upon everyone else to  
12 make sure that they ultimately agree.

13 What I have as the last point, Your Honor, is if  
14 there will be a modification to the inter-creditor agreement  
15 between Quality One, Pine Bridge and DLJ, and that to  
16 accommodate the payment of the fees and expenses that may be  
17 advanced to Pine Bridge as part of this agreement, that DLJ  
18 will have a right to turn over in the event that the amounts  
19 are not sufficient to pay the DLJ note in full while they  
20 have -- that is, while Pine Bridge has received that payment  
21 that we talked about at the end of the six-month period.

22 So they will have a right of -- and to the extent  
23 that it's not paid, they will have a right of first recovery  
24 on the PB note to the extent that it's unpaid.

25 So, effectively, what it amounts to is because DLJ

1 is allowing the payment to cover the fees to be made, in the  
2 event that DLJ has a shortfall, they have a direct right of  
3 recovery under both the note, to the extent it's unpaid, and  
4 a direct right of turnover against Pine Bridge.

5 I'm sort of looking around to make sure I didn't  
6 miss anything. But I guess everyone will have comments.

7 THE COURT: I'm going to go ahead and go round  
8 robin to each of the parties in interest now to make sure  
9 that these terms as outlined on the record reflect the  
10 agreements of the various constituencies. So we'll go ahead  
11 and --

12 MR. GLERUM: Charlie Glerum, Your Honor, for  
13 JPMorgan Chase.

14 THE COURT: I didn't hear your -- I didn't hear  
15 your client in there, so I'm --

16 MR. GLERUM: That's what I wanted --

17 THE COURT: -- assuming it's okay with you.

18 Mr. GLERUM: -- to make sure -- the -- we heard  
19 the term second lien lenders and we heard the term lenders  
20 sometimes. And the only thing that affects us in this deal  
21 principally is that paragraph 4 reads that the buyer shall  
22 initiate a wire transfer to us at closing in an amount that  
23 fully satisfies the various obligations and that's still the  
24 deal.

25 Thank you.



1 THE COURT: All right.

2 So in other words, structurally, the first --  
3 JPMorgan Chase, the first lien holder, gets paid in closing.  
4 They're done. The reserve that's been set aside through the  
5 DIP order stays with the estate, does not go over to the  
6 purchaser, and then all these other arrangements about fees  
7 going places and disbursements being withheld will have  
8 nothing to do with Chase because they'll be out at that  
9 point.

10 MR. GLERUM: Yes, Your Honor.

11 MR. GRILLO: That's exactly right, Your Honor.

12 THE COURT: All right.

13 MR. GRILLO: That was the one part of the deal  
14 that really did not change, and so no offense to Mr. Glerum.  
15 We just weren't changing that payment in full.

16 THE COURT: All right. So Mr. Carroll or -- well,  
17 Mr. Goldberg, come on up.

18 MR. GOLDBERG: Thank you, Your Honor. Adam  
19 Goldberg of Latham & Watkins on behalf of DLJ Investment  
20 Partners.

21 I think Manny did a great job of explaining the  
22 resolution that we reached after a lot of hard work from all  
23 the parties. I -- there are just a couple of issues that I  
24 wanted to clarify to make them abundantly clear given that  
25 we haven't had time to put together a formal stipulation for

1 Your Honor.

2 The first is that with regard to notice to the  
3 committee of any actions against segregated funds held by  
4 DLJ, and I understand for Pine Bridge as well, the notice is  
5 related to actions to impose security on the funds --  
6 segregated funds held that are distributed on account of the  
7 notes as opposed to any legal action against the fund that  
8 holds the account.

9 Second, that the terms and timing of release of  
10 segregated funds to -- for use by each of the second lien  
11 lenders are different, so that if, for example, all claims  
12 against my client, DLJ, were denied or released by the  
13 committee, then DLJ would be used -- be able to use its  
14 funds even if Pine Bridge remained in litigation.

15 Third, just given the attention that was put on  
16 the issue concerning the right to reimbursement of fees by  
17 Quality One, I think the way I would describe the  
18 distinction is that we agree that Quality One would not be  
19 liable for fees in connection with the prior credit  
20 agreement and the liens that are before Your Honor. But to  
21 the extent there are any future actions concerning the liens  
22 created with respect to the new Quality One notes that are  
23 being provided to the second lien lenders, those fees and  
24 expenses would be reimbursable.

25 There is one point that was brought to my

1 attention this morning that we hadn't had a chance to  
2 discuss and actually I understood, contrary to what Mr.  
3 Grillo had explained, Mr. Grillo mentioned that the right to  
4 pursue causes of action would be assigned to the creditors'  
5 committee. We had understood that that would not occur  
6 today and that it would be brought before Your Honor on  
7 notice and hearing at which all parties have the opportunity  
8 to object. And we just want to make sure that is -- is  
9 actually the procedure that the debtors envision.

10 MR. GRILLO: The debtors have agreed to assign  
11 their rights to the committee. To the extent that parties  
12 have the right to object to that, then we will -- then we'll  
13 provide an opportunity. But we -- we have agreed to turn  
14 them over. I -- it -- they're just the debtors' causes of  
15 action. I don't know what -- what rights parties have to  
16 object to that. But if -- to the extent we need to put that  
17 on, we can put that on for a hearing.

18 THE COURT: But -- so mechanically what at least  
19 DLJ is looking for is some type of -- some type of procedure  
20 by which the causes of action are assigned for prosecution  
21 purposes whether it's by motion or by some other protocol,  
22 you all are just asking for that not to be -- not for the  
23 actual assignment of the causes of action to be approved  
24 today.

25 MR. GOLDBERG: Yes. That's right, Your Honor.

1 That all parties will have an opportunity to review the  
2 procedure for providing the committee with standing to  
3 pursue those causes of action, and that the parties comply  
4 with the standards of the Second Circuit for granting  
5 standing to another party.

6 THE COURT: All right.

7 Mr. Carroll.

8 MR. CARROLL: Your Honor, I think it's a lot  
9 simpler than that. When the debtor assigns voluntarily, I  
10 don't think we need to comply with any standards. So I  
11 think the debtor can presently make that assignment. If DLJ  
12 or Pine Bridge wants to come back later and object to it,  
13 that's fine. But at present and particularly with respect  
14 to the upcoming challenge deadline, our position would be  
15 that the committee is not required to do anything further  
16 and can commence that prosecution if we deem it appropriate.

17 THE COURT: All right. All right. Any other  
18 issues from the DLJ standpoint?

19 MR. GOLDBERG: Well, no. That's all, Your Honor.  
20 I guess in terms of the standing issue, then I guess it  
21 would be helpful for some direction from the Court about how  
22 we should address any issue, if we should perhaps ask the  
23 debtor to file a stipulation on these issues or if we should  
24 raise them in response to any action that the committee  
25 brings.

1 THE COURT: All right. Well, let me get the rest  
2 of what may be on the list of not quite agreed to, if any,  
3 and then we'll circle back to this. And if there are any  
4 others, any other.

5 MR. GOLDBERG: Thank you, Your Honor.

6 THE COURT: Okay.

7 MR. SALZBERG: Your Honor, Mark Salzberg, Patton  
8 Boggs on behalf of Pine Bridge. I appreciate the efforts of  
9 Mr. Grillo and his team to drive the parties to agreement  
10 today. And he did correctly synthesize and announce what  
11 the terms are with respect to second lien as modified, I  
12 think, correctly by counsel for DLJ.

13 Just one point of clarification. There was a  
14 right of reimbursement that was noted by Mr. Grillo. To the  
15 extent that DLJ was not satisfied, they would have -- or  
16 their note was not satisfied they would have a right of  
17 reimbursement.

18 A point of clarification in the sense of the  
19 million dollar payment from Quality One, the -- essentially,  
20 a prepayment under the note for the legal fees, that is not  
21 subject to a turnover for reimbursement at the time that it  
22 is delivered. That is my understanding. So as -- if DLJ is  
23 not satisfied in full at that time, which would be six  
24 months out, that money would be able to be used by Pine  
25 Bridge for legal expenses. Is that correct?

1 MR. GOLDBERG: At that time, Your Honor, but it  
2 may be in the future that it would become subject to  
3 turnover --

4 MR. SALZBERG: Yeah.

5 MR. GOLDBERG: -- if there's an event of default  
6 or --

7 THE COURT: It's a timing mechanic. The scope of  
8 the target is the million dollars or whatever portion of it  
9 is actually paid over by Quality One to Pine Bridge. Then  
10 it's a timing mechanic that you all need to work out: When  
11 does DLJ need to have been paid off before it can seek  
12 access to the million dollars. Now I'm assuming that's an  
13 issue that you all can work out.

14 MR. SALZBERG: Yes, Your Honor. That will be  
15 addressed in the papers.

16 MR. GOLDBERG: Yes, Your Honor. Thank you.

17 MR. SALZBERG: Thank you, Your Honor.

18 THE COURT: All right.

19 Mr. Carroll.

20 MR. GLERUM: I apologize, Your Honor. I have one  
21 more.

22 I thought the we did this, but this is a mini-  
23 controversy. But there is a cash collateral account at  
24 JPMorgan Chase to -- that -- to secure amounts that might be  
25 drawn on a letter of credit issued for the benefit of Mr.

1 Apling.

2 That arrangement, the cash collateral account, is  
3 unaffected by the transaction that you're being asked to  
4 approve today. And the -- that cash collateral account will  
5 remain with JPMorgan and will be used to pay JPMorgan, if  
6 any draws are made on the Apling letter of credit.

7 THE COURT: Mr. Grillo.

8 MR. GRILLO: Obviously, no draws will be made,  
9 Your Honor, until we come back to the Court on that point,  
10 just for clarification.

11 MR. GLERUM: Thank you.

12 THE COURT: All right.

13 All right. So, Mr. Carroll --

14 MR. CARROLL: I thank you, Your Honor. We  
15 appreciate your assistance and your patience in getting us  
16 to this point, and for all the parties working together. I  
17 think Mr. Grillo and the other parties have accurately  
18 stated it.

19 THE COURT: All right. Thank you.

20 Mr. Wielebinski.

21 MR. WIELEBINSKI: Your Honor, I, too, want to  
22 thank all the parties for working cooperatively to reach an  
23 agreement.

24 I think Mr. Grillo and the other parties correctly  
25 stated the terms of our agreement subject, of course, to

1 Your Honor eventually approving the sale order.

2 I did want to clarify something, and it is in the  
3 stipulation in front of you. It's paragraph number 2 and  
4 it's with respect to the \$3 million expense claim reserve  
5 account. The language at the end actually says that, for  
6 the avoidance of doubt the foregoing shall not effect or  
7 impact the tests and conditions set forth in Section 4.6 of  
8 the stalking horse APA with respect to whether a material  
9 adverse event has occurred.

10 As Mr. Grillo stated it, I think he actually read  
11 it the opposite way; that this payment is made despite those  
12 -- those tests. Those tests remain and we're making that  
13 payment subject to those conditions in the APA.

14 The second thing, Your Honor, is you raised an  
15 issue about -- and I don't know if you want to --

16 MR. GRILLO: I was just going to corroborate Mr.  
17 Wielebinski's statement. If I said it the other way, I  
18 misspoke. We don't think it's going to be an issue. The  
19 test does apply, but we don't think we're going to have a  
20 problem with that, Your Honor.

21 THE COURT: All right. So it will be -- in the  
22 final document to be submitted it will be as written in this  
23 current draft stipulation.

24 MR. GRILLO: Correct. If I -- if I misspoke, then  
25 I apologize.



1 MR. WIELEBINSKI: And for the record, Your Honor,  
2 that's the first time Mr. Grillo has agreed with me  
3 throughout this process.

4 (Laughter)

5 MR. WIELEBINSKI: Your Honor, the second issue is  
6 you raised this Chapter 5 question. We are going to convey  
7 those rights. I -- I want the Court to be clear that those  
8 claims are there and they can pursue them, but to the extent  
9 that they impact our rights in or to or under the assets  
10 we've purchased, or are otherwise subject to protections  
11 we're given in the asset purchase agreement or the sale  
12 order or other orders collateral to the sale order, then  
13 we're going to reserve all our rights.

14 And an example is the contracts that were assumed  
15 and assigned. The case law says that, you know, that  
16 assumption and the payment of the cure is an absolute  
17 defense to Chapter 5 actions. So we don't expect that after  
18 we paid the cure we're going to have to repay it because a  
19 Chapter 5 cause of action was brought.

20 So we will reserve our rights with respect to  
21 that.

22 THE COURT: All right. Mr. Carroll.

23 MR. CARROLL: Yes, Your Honor. And I don't think  
24 there is a dispute. Obviously, I don't know what claims may  
25 arise later. But certainly with respect to the example that

1 Mr. Wielebinski raised, we agree with that and, in fact, the  
2 Verizon resolution or settlement, however you would like to  
3 term it, provides for a release to Verizon with our  
4 understanding that such a Chapter 5 claim is included in  
5 that.

6 THE COURT: All right. But this is -- this is not  
7 a conveyance and re-conveyance. This is excluding from the  
8 assets going over various causes of action including the  
9 Chapter 5's. So those are not being conveyed to Quality One  
10 and then coming back. They're simply not being conveyed.

11 MR. CARROLL: No. I think it is as you said  
12 earlier, Your Honor. The Chapter 5 claims are being -- are  
13 not being conveyed to --

14 THE COURT: To Quality One.

15 MR. CARROLL: Actually, it's exactly as you just  
16 said it, Your Honor. I apologize.

17 THE COURT: All right.

18 All right. Ms. Black, anything from your office?

19 MS. BLACK: Your Honor, Christine Black, Office of  
20 the United States Trustee. We are okay with the revisions  
21 to the documents subject to seeing a final (indiscernible).

22 THE COURT: All right.

23 It seems, then, that the only issue from the --  
24 oh, Mr. Goldberg.

25 MR. GOLDBERG: Sir --

1 THE COURT: Other than the proffer to support  
2 approving all of this, which we'll get to in a moment, but  
3 Mr. Goldberg.

4 MR. GOLDBERG: I just thought Your Honor might be  
5 ready to address the standing issue, and I had a few remarks  
6 on it if -- whenever you're ready.

7 THE COURT: All right. Well, that seems to the  
8 Court to be entirely a timing mechanic, even though it's  
9 made into the deal. But it is -- it is built into it as an  
10 integral part of the deal.

11 So it is -- Mr. Carroll, from the committee's  
12 standpoint, is the committee seeking final approval today as  
13 part of the sale of the -- whether it's an assignment for  
14 prosecution rights or a -- the creation of a standing right?  
15 Is that something that the committee is seeking to have  
16 finally approved today or is that something that the  
17 committee contemplates a sale order and provides that the  
18 debtor will convey to the committee all rights, all  
19 standing, et cetera, and then it's a question of when that  
20 would be approved?

21 MR. CARROLL: We view it, Your Honor, that the  
22 approval is done today and that perhaps DLJ or Pine Bridge  
23 may come back in the litigation and argue that that  
24 assignment wasn't appropriate in some respect.

25 But as to standing to commence those litigations,

1       that the debtor is giving us everything we need to and we  
2       are permitted to commence those litigations.

3               THE COURT: All right.

4               So, Mr. Goldberg, from that -- as articulated,  
5       does DLJ have an objection?

6               MR. GOLDBERG: Yes, Your Honor. This was brought  
7       up to us actually at the hearing. I was informed before the  
8       hearing that the debtor would be seeking to assign standing  
9       on notice and hearing at which parties may be heard, but I  
10      have not had a chance to prepare on this issue.

11              But I would direct the Court's attention to the  
12      final DIP order, which includes lengthy stipulations by the  
13      debtors to the validity and enforceability and perfection of  
14      the liens and claims of the second lien lenders, and a  
15      release of the second lien lenders from liability.

16              Now, of course, that's not binding on the  
17      creditors' committee yet. We all know that they have until  
18      October 24th to file a motion to obtain standing to pursue  
19      those claims. But from the debtors' perspective, those  
20      stipulations are binding. Presumably, they exercised their  
21      fiduciary duties and analyzed any claims that they did have  
22      and decided to release those claims.

23              So I don't see what standing the debtor has to  
24      assign to the creditors' committee. Rather, it should be  
25      the creditors' committee filing a motion for standing before

1 Your Honor.

2 THE COURT: But the two are not necessarily  
3 inconsistent. In other words, if -- if the debtor is  
4 assigning for -- is providing the committee with standing to  
5 prosecute claims and causes of action that belong to the  
6 estate, but the debtor has at least released whatever claims  
7 it might have against DLJ and Pine Bridge, the assignment of  
8 standing wouldn't negate whatever effect that release had in  
9 the DIP order. In other words, it's not going to undue --  
10 as far as that release in the DIP order may have gone, if  
11 the debtor assigns its standing to pursue claims on behalf  
12 of the estate to the committee, that wouldn't undue whatever  
13 release was provided in the DIP order.

14 MR. GOLDBERG: But the debtor --

15 THE COURT: The debtors' rights go over such as  
16 they are.

17 MR. GOLDBERG: Well, Your Honor, for the debtors'  
18 release to be given any effect, I don't see how they can  
19 simply decide we don't believe that there are causes of  
20 actions. We've released those claims and causes and action  
21 and agree with their secured lenders as an inducement to  
22 consent to the use of their cash collateral and other  
23 collateral as well as the priming by a DIP facility as part  
24 of a consensual sale process, and then turn around at the  
25 end of that sale process and say to that secured lender that

1 has cooperated and granted concessions that, actually, we're  
2 not going to honor our agreement and we're freely going to  
3 assign the claims that we didn't think existed to someone  
4 who we believe will pursue them.

5 THE COURT: But that -- that would somewhat  
6 vitiates the -- allowing the committee or other parties in  
7 interest to have an independent right of review and to bring  
8 -- to bring litigation. As you're articulating it, that  
9 would render that provision meaningless if the debtors'  
10 agreement that it doesn't have defenses would bind other  
11 parties -- other parties in interest.

12 MR. GOLDBERG: The creditors' committee retains  
13 the right, Your Honor, and as embodied in the DIP order,  
14 that right is to analyze the claims and causes of action  
15 that the estate, not the debtors, may have. And to pursue  
16 those through a motion for standing filed by October 24th.  
17 To that end, we have agreed with the creditors' committee to  
18 provide them discovery and are working in a cooperative  
19 manner because, Your Honor, we don't think we'll ever be  
20 liable for any claims or causes of action.

21 But there is an established process under the  
22 Second Circuit case of STN that requires that the creditors'  
23 committee obtain standing following a cost benefit analysis  
24 to determine whether it's actually in the interest of the  
25 estate, given that the debtor has already determined in

1       their fiduciary duties to release those causes of action.

2               THE COURT: All right. Thank you.

3               Mr. Salzberg, are you --

4               MR. SALZBERG: Just very quickly, Your Honor.

5               It was contemplated in the settlement that was  
6       announced by Mr. Grillo that, in fact, the committee would  
7       be bringing that motion for standing because, if I'm not  
8       mistaken, the hold order or essentially the freeze of the  
9       money, one of the elements that would terminate that freeze  
10      would be a denial of standing of the motion to confer  
11      derivative standing, an STN motion. So that was -- that was  
12      contemplated in the settlement that was announced on the  
13      record today.

14              THE COURT: But I think that's the first --

15              MR. SALZBERG: That's the first of three.

16              THE COURT: -- that's the first part today that I  
17      didn't quite follow, so can you run back through that.

18              MR. SALZBERG: Yes. That was the monies that were  
19      going to be agreed to be held by the second lien lenders  
20      would expire at the earlier of the term of -- the denial of  
21      a motion for derivative standing, or STN motion, a dismissal  
22      of any claims brought by the committee, a dismissal by the  
23      Bankruptcy Court not subject to an appeal, or what was -- it  
24      was then a time period following, for instance, with respect  
25      to Pine Bridge one year after the payment in full of the

1 note subject to the right of the committee to seek an  
2 extension of that time period.

3 But it was always contemplated the committee would  
4 bring that motion for standing.

5 THE COURT: All right. All right. Thank you.  
6 Mr. Carroll.

7 MR. CARROLL: Yes, Your Honor.

8 THE COURT: Let's -- let's -- let's go from the  
9 analytic to the practical. So assuming that -- because I do  
10 have the 2:00, but I think we're close to wrapping up on  
11 PCD. Assuming an order is entered quickly after it's  
12 submitted to me because you have a lot of where for art  
13 tho's and semi colons to finish up here, and this may best  
14 go, Mr. Wielebinski, to you representing the checkbook, when  
15 do you all contemplate having an actual closing? And  
16 whether it's an actual or a virtual, when do you actually  
17 contemplate closing?

18 MR. WIELEBINSKI: I think we're currently looking  
19 at the 18th; is that right?

20 UNIDENTIFIED SPEAKER: The 17th.

21 MR. WIELEBINSKI: The 17th of this month, Your  
22 Honor.

23 THE COURT: All right.

24 MR. WIELEBINSKI: Next Thursday.

25 THE COURT: All right.



1 (Pause)

2 THE COURT: All right. Hang on one second, then.

3 And for the parties here for the 2:00 and on the  
4 phone for the 2:00, just bear with us.

5 (Pause)

6 THE COURT: All right. So the Court protocol's,  
7 then, will be as follows.

8 With respect to the assignment of standing rights  
9 to the committee, first, the proposed form of sale order  
10 will provide that it is the debtors' intention and agreement  
11 that -- fill your adjectives and adverbs -- to assign to the  
12 committee all rights, causes of action, et cetera, make it  
13 in better prose than I'm articulating it. That motion, Mr.  
14 Carroll, can the committee have that filed by tomorrow  
15 morning?

16 MR. CARROLL: Your Honor, here's the problem with  
17 that motion is a couple of issues. The motion that the  
18 second lien lenders are contemplating isn't a motion that  
19 exists because what actually is happening is the debtor is  
20 assigning it's causes of action to the committee and there's  
21 nothing else that needed. We don't need any more finding  
22 from the Court other than the approval of that assignment.

23 What the second lien lenders are saying is the  
24 committee must make a motion under STN, but STN only applies  
25 if the debtor refuses. And if we have to make that motion,

1     what we're required to do is set forth the merits of those  
2     claims, set forth many different things, including why the  
3     debtor refused.

4             We haven't gotten most of the documents that are  
5     supposed to be produced. We haven't taken the 2004 exams.  
6     So we cannot do that. And that's one of the reasons why an  
7     important element of this, which I know Mr. Goldberg said he  
8     heard for the first time today, but we raised with the  
9     debtor probably about six weeks ago and got their agreement  
10    a long time ago.

11            So that's a very important point to us because,  
12    otherwise, we're going to be running around for the next two  
13    weeks drafting that motion instead of focusing on trying to  
14    figure out what, in fact, the valid legal arguments are, and  
15    to the extent necessary, drafting a complaint. This really  
16    becomes a sideshow distraction, Your Honor, and is another  
17    obstacle that the lenders tried to create that, in this  
18    case, isn't there because the debtor has agreed to the  
19    assignment.

20            THE COURT: Mr. Grillo --

21            MR. GRILLO: Yes.

22            THE COURT: -- because part of it is from the  
23    Court's vantage point -- let me work backwards from  
24    practical back to the analytic. You all are going to close  
25    on the 17th. I will set a protocol such that I will make a

1 decision on this narrow issue on Wednesday, October 16th, so  
2 that we can have a sale order and a closing. What I hear  
3 the second lienholders asking for is some form of notice  
4 through a protocol because the assignment or the creation of  
5 standing isn't built into the current motion that's before  
6 the Court.

7 MR. GRILLO: I think, Your Honor, it is, as I see  
8 it, just -- and I know Your Honor has something else so I'll  
9 be extraordinarily brief.

10 Whatever rights the debtors have, we think the  
11 standing is ultimately a motion to dismiss issue or not.  
12 The debtors have agreed -- and I think Mr. Carroll is right  
13 in terms of what the burden is. The burden is if the  
14 debtors decide not to pursue something, then the -- and not  
15 to transfer it to the committee or allow someone else to  
16 pursue it on behalf of the estate, then that's how -- then  
17 you need an STN motion in that context.

18 We're agreeing to do that. The debtors are not  
19 going to pursue whatever claims the estate has or doesn't  
20 have. I think the standing issue, frankly, can get resolved  
21 in a motion to dismiss, you know, if a complaint is actually  
22 brought.

23 So to sort of reduce the expenses on the estate at  
24 this point, the debtors have -- the committee has asked to  
25 bring those actions. The debtors have agreed that they can,

1 in fact, as far as the debtor is concerned. They take with  
2 them whatever burdens are in the DIP loans or not. The way  
3 the DIP order is set up, it's stipulations as opposed to  
4 findings. The releases are what they are, what they cover  
5 or what they don't.

6 But the bottom line is is that from a standing  
7 perspective, I don't know that we need something separate on  
8 that before that point in time. They can certainly raise it  
9 as part of a motion to dismiss the complaint if they think  
10 there's an issue based on the transferability.

11 But I don't think it's subject to everyone else's  
12 judgment, frankly, what the debtors do with the causes of  
13 action, so long as it doesn't abandon them and there's no  
14 one pursuing them on behalf of the estate.

15 THE COURT: All right.

16 MR. GOLDBERG: Your Honor, if I may for a just a  
17 moment respond to the debtors' arguments.

18 According to the DIP order the debtor does not  
19 have a right to assign. The debtor has --

20 THE COURT: Well, this is broader, though, than  
21 just the second lienholder. These are all of the estates'  
22 rights and causes of action.

23 MR. GOLDBERG: Yes. And their -- the committee  
24 has -- the debtor has the ability to bring those causes of  
25 action. And so if there is, for example, a preference or

1 fraudulent transfer action against someone who received a  
2 transfer from the estates prior to the bankruptcy petition,  
3 those are not released by the DIP order.

4 With respect to the second lien lenders as a  
5 material inducement to cooperate in this process, to consent  
6 to the priming of the liens, the debtors waived their rights  
7 to pursue those claims and, therefore, have no standing to  
8 assign. They in their fiduciary duties have decided that  
9 those claims are not worth pursuing. And so now it is with  
10 the creditors' committee, according to the procedure in the  
11 DIP order and embodied in the concept of the challenge  
12 action, to obtain standing.

13 And the procedures of STN are built for exactly  
14 this purpose; to determine whether it is in the cost benefit  
15 -- the benefit of the estate to incur the costs of pursuing  
16 that action given that the debtor, the party that knows the  
17 most about the prepetition conduct, has decided in their  
18 fiduciary duties to release those causes of action.

19 THE COURT: All right. So how -- how quickly can  
20 the second lienholders file their written objection this  
21 assignment?

22 The Court's -- the Court's focus isn't so much on  
23 substantively who ultimately might win or lose on a 12(b)  
24 motion to dismiss filed a year from now. It's the change in  
25 the asset sale proposal that these causes of actions are

1 going from the buyer, to which the committee objected, and  
2 now to the committee with a certain carve out for assets  
3 accepted by the buyer.

4 So from a notice of due process standpoint, I'm  
5 willing to create a protocol where the second lienholders  
6 can file an objection to that occurring, whether it's by the  
7 debtor and the committee filing a motion or filing a  
8 stipulation, what have you. Any protocol is fine so that  
9 you all get your chance to file the written objection to  
10 what, from the Court's vantage point, is a little bit of a  
11 change. It's not a seed change, but it's a little bit of a  
12 change to the asset purchase agreement of the sale that was  
13 first proposed.

14 So it's really a timing mechanic at this point.  
15 They've put on the record the proposed stipulation. There's  
16 going to be at some point either today or tomorrow what I  
17 fear will now be a 78 page sale order from the 34 pages we  
18 already have. There's going to be language in that that you  
19 all are still working out. There's going to be a provision  
20 in that to which you all will not agree.

21 So now it's a mechanic because I'm going to make a  
22 decision as part of this overall sale before it closes  
23 whether there's a conveyance of rights or a creation of  
24 standing, however it's -- however it's articulated.

25 So I can give you all -- I can have the debtor and

1 the committee file a two-page stipulation that's excerpted  
2 from the sale order. It can be built into the sale order  
3 and you all can object to it. Either way, I'm going to  
4 decide it substantively before the sale closes.

5 So mechanically how do you all want to -- want to  
6 go about it?

7 MR. GOLDBERG: Well, we can work under whatever  
8 time period the Court requires to approve the sale to meet  
9 the milestones in the process. If the Court, I think,  
10 mentioned Wednesday is October 16th, which is in six days.  
11 We can have an objection on file for Monday morning or  
12 whenever the Court so desires.

13 THE COURT: All right. Mr. Salzberg.

14 MR. SALZBERG: Your Honor, we can also have an  
15 objection or a paper filed by Monday or Tuesday at the  
16 latest. Whatever works with the Court's schedule.

17 THE COURT: All right.

18 So Mr. Grillo, Mr. Carroll.

19 (Pause)

20 MR. CARROLL: Your Honor, what Mr. Grillo and I  
21 were discussing was rather than the need for -- to deal with  
22 this in connection with the sale, DLJ and Pine Bridge have  
23 the right to raise this on a motion to dismiss. And let  
24 them raise it on a motion to dismiss rather than now when we  
25 have short timetables and maybe we never get there.

1 THE COURT: All right. So the committee is  
2 willing to accept this assignment of rights without  
3 prejudice to DLJ or Pine Bridge contesting, essentially, the  
4 validity or effectiveness of that assignment in any  
5 subsequent litigation?

6 MR. CARROLL: Yes. The only caveat to that, Your  
7 Honor, is one of timing. To the extent that we commence an  
8 action on or before the challenge deadline and DLJ or Pine  
9 Bridge come back and say you could not do that because you  
10 didn't have authority to, that wouldn't -- we wouldn't allow  
11 them to reserve that argument. But they certainly can say  
12 we don't have authority. They can't say we didn't timely  
13 commence it because we didn't have authority.

14 THE COURT: All right. Well, I'm either going to  
15 decide it now or I'm going to reserve it until the time of a  
16 standing motion to dismiss. So either way is fine, but I'm  
17 not going to let this issue now wag the whole sale process.  
18 So --

19 MR. CARROLL: And that's where I think Mr. Grillo  
20 and I were trying to do, Your Honor, to take this out of  
21 that and allow you to address the sale separately.

22 MR. SALZBERG: Your Honor, very briefly.

23 The whole point of the deadline for the challenge  
24 period expiring on October 24th was to set a time period for  
25 the committee to bring a motion -- I think it says that in



1 the DIP order -- to bring a motion to confer standing to  
2 bring an action against Pine Bridge or Credit Suisse or DLJ.

3 We have no problem, speaking for Pine Bridge,  
4 putting together papers, submitting them to Your Honor as  
5 soon as you would like them. Monday again would be fine.  
6 And we think the issue would be properly teed up for a  
7 decision by Your Honor in the context of the sale order.

8 MR. GOLDBERG: Your Honor, just practically  
9 speaking, we put in a great deal of effort and work into  
10 reaching what we thought was a completely consensual  
11 agreement and sale proposal for Your Honor.

12 This issue of assignment of claims was represented  
13 to me when we walked into the door at -- was it 1:15 today  
14 as not being a part of the sale. It was removed from a  
15 prior draft of the stipulation. And so now to have it be a  
16 part of the sale is something that wasn't before us when we  
17 agreed to the terms presented before Your Honor.

18 So I do ask that we have the opportunity to  
19 consider the issue more fully and that this issue be removed  
20 from a term of the sale.

21 THE COURT: All right. I'm going to take my 2:00  
22 calendar and that should be done in half an hour. Don't  
23 take that as a hit, Mr. Ringgold, but that -- we should be  
24 done with the 2:00 calendar in half an hour. So why don't  
25 you all visit through this last piece.

1           Before I release you out to that, though, at the  
2           moment this is -- well, these are the same dangerous words  
3           that were said outside. This is the last piece other than  
4           actually getting then the proffer of the testimony. So  
5           we're not -- we're not rewinding the clock. This is --  
6           you're in the funnel now resolving, if you can, this last  
7           piece of it. Then when you come back you'll tell me what  
8           you have worked out or not worked out.

9           But, again, from the Court's vantage point, if I  
10          need to decide -- if I need to decide something  
11          substantively before the sale is to close, I will do that.  
12          If there's a protocol you all want to establish that avoids  
13          the need to do that, that's fine as well. But either way,  
14          we're going to get it resolved this afternoon and -- so that  
15          the sale, hopefully, can go forward and close.

16          All right.

17          MR. CARROLL: Thank you, Your Honor.

18          THE COURT: All right. So we'll adjourn on PCD  
19          until 2:45.

20          (Recess taken at 2:18 p.m.; resumed at 3:06 p.m.)

21          THE COURT: Thank you. Please be seated.

22          Are you going to ask for ten more minutes?

23          MR. GRILLO: I am not.

24          (Laughter)

25          UNIDENTIFIED SPEAKER: No. No. Please. No.

1 MR. GRILLO: I am not. I am not going to ask for  
2 ten more minutes. I -- I promise this will only take ten  
3 minutes. How's that?

4 THE COURT: I'm not sure how many ten more minutes  
5 Mr. Glerum can take.

6 MR. GRILLO: Thank you, Your Honor.

7 Again, for the record, Emmanuel Grillo on behalf  
8 of the debtors.

9 Two things, Your Honor. First, with respect to  
10 the issue that we closed with, we will prepare and file a  
11 separate stipulation with presentment to the Court.

12 I guess the question is if Your Honor wants to  
13 hear argument on it and when you want to do that.

14 THE COURT: More than what I've heard already or  
15 --

16 MR. GRILLO: It's never enough it seems. But the  
17 bottom line is is that I know the parties would like to be  
18 heard on the point. So depending on what Your Honor would  
19 like to do.

20 THE COURT: All right.

21 MR. GRILLO: And we'll separate it out from the  
22 sale stipulation and we'll put it separately, and then we'll  
23 sort of deal with it on its own. We've agreed, you know, to  
24 turn it over. The committee agreed to accept. The parties  
25 obviously want to be heard on that point. So whatever Your

1 Honor would like to do in terms of timing.

2 THE COURT: All right. And in terms of the rest  
3 of the sale order, how quickly do you all anticipate being  
4 able to have a sale order to the Court to review?

5 MR. GRILLO: My guess is that we're going to turn  
6 it tonight and get it out to everybody. Comments usually  
7 take -- you know, fortunately, some of the things as Your  
8 Honor saw were sort of written up in the stipulation. So we  
9 have part of the work done already.

10 THE COURT: I was wondering who brought the  
11 printer. Was there a printer --

12 (Laughter)

13 MR. GRILLO: No. That was actually from last  
14 night, actually. That was part of the deal. But, you know,  
15 we'll turn it tonight. We'll get it around to everyone.  
16 The hope is that we can get comments done from everyone by  
17 tomorrow and submit it by the close of business tomorrow. I  
18 mean, I would like to say earlier than that, but I think  
19 that's unrealistic given the number of parties that are  
20 involved.

21 THE COURT: All right. We'll go -- as you all  
22 know, other than the other issues going out that are in the  
23 press, Monday is also actually a legal holiday. But if the  
24 final, final form of order hits -- even if it hits on  
25 Monday, we'll look for it so that we can try to get it -- at

1 least get my signature on it -- I'm not sure how to get the  
2 clerk's office to enter it. That's a different mechanic.  
3 But if we have the order -- in other words, if we have the  
4 final, final version of that -- of the sale order by Monday,  
5 we'll look for it and try to get it entered Monday. Worst  
6 case, we'll have it entered Tuesday and it will -- it will  
7 contain the 14 -- the waiver of the 14 day stay under the  
8 circumstances. So that won't be a hitch in the giddy-up.

9 As far as this discreet issue of standing, then, I  
10 take it now the debtor and the committee are going to file a  
11 -- I'm going to say dangerously two or three page  
12 stipulation on the standing issue?

13 MR. GRILLO: Yeah. One and a half pages. I think  
14 it's -- yeah. The stipulation itself will not be --

15 THE COURT: There's --

16 MR. GRILLO: -- the issue.

17 THE COURT: -- a doubter among you on that and  
18 it's -- and it's the drafter of the 67 page DIP order.

19 (Laughter)

20 MR. GRILLO: Thank you. Thank you. Thank you.  
21 Thank you. Thank you, Your Honor. I greatly appreciate  
22 that comment.

23 THE COURT: Although with --

24 MR. CARROLL: But, Judge, I don't want to  
25 exaggerate. It was actually 64.

1 THE COURT: Well --

2 MR. CARROLL: I happen to have had the last page  
3 right here in front of me.

4 THE COURT: If you all are going to be fair,  
5 though, you need -- you do need to put at least ten to 15 of  
6 those pages on the second lienholder, so you can't put them  
7 all on --

8 MR. GRILLO: Right.

9 THE COURT: -- on the first.

10 MR. GRILLO: Fair enough. Yes. Duly noted, Your  
11 Honor.

12 THE COURT: All right. So get that stipulation  
13 filed and served within this group let's say by 2:00  
14 tomorrow.

15 MR. GRILLO: Sure.

16 THE COURT: And then I'll look for an objection to  
17 be filed, we'll say by noon on Monday.

18 MR. GOLDBERG: yes, Your Honor.

19 MR. GLERUM: That's fine, Your Honor.

20 THE COURT: And -- all right. And then I'll take  
21 -- hang on one second.

22 (Pause)

23 THE COURT: I'll then -- I'll take argument  
24 telephonically on Tuesday morning, October 15th, Tuesday  
25 morning, October 15th at 9:30. That will be by telephone.

1 So the stip to be filed by 2 p.m. --

2 MR. GRILLO: 2 p.m. tomorrow.

3 THE COURT: -- tomorrow the 11th, objections by 2  
4 p.m. on the 14th, and then I'll take argument at 9:30 a.m.  
5 telephonically because I'll be in Central Islip on October  
6 15th on the narrow issue of the assignment and the protocol  
7 of the assignment of the right to bring causes of action to  
8 which the debtor has agreed to the creditors' committee.  
9 I'm assuming that briefing -- and I'll take simultaneous  
10 briefing. So to the extent that the committee and the  
11 debtor want to anticipate the objection that's been somewhat  
12 outlined here today, if you all want to also file briefing  
13 on that issue, that would also be due by Monday, the 14th at  
14 2:00.

15 I'm assuming that that briefing will be informed  
16 both by STN and with thanks to my law clerk --

17 MR. GRILLO: Commodore.

18 THE COURT: -- Commodore International as well.

19 MR. GRILLO: Yes.

20 THE COURT: All right.

21 All right. So then I'll take a proffer of  
22 testimony in support of the sale or is there --

23 MR. GRILLO: Yes.

24 THE COURT: -- something else?

25 MR. GRILLO: That's it.

1 THE COURT: All right.

2 All right. So Mr. Grillo.

3 MR. GRILLO: Yes. Thank you, Your Honor.

4 In support of the sale motion that was presented  
5 to the Court today and approve -- and for approval of the  
6 stalking horse APA with Quality One Wireless, the debtors  
7 and Quality One would jointly present two witnesses.

8 The first witness would be Eric Barbieri, managing  
9 director of Richterconsulting.com. Mr. Barbieri is here in  
10 the courtroom today.

11 The second witness for whom testify is -- will be  
12 proffered will be Marshall Harris. Marshall Harris is the  
13 general counsel of Quality One and he is also in the  
14 courtroom today.

15 We would actually ask to incorporate by reference  
16 as part of the record the prior testimony of Mr. David  
17 Saperstein (ph) who spoke at the bid procedures hearing  
18 about the process and what had occurred through that date,  
19 and also the first day affidavits that were submitted and  
20 not subject to -- well, were made available to cross-  
21 examination of Mr. Ray Cunsman (ph). Mr. Cunsman is not  
22 here with us today as we didn't proffer -- who we didn't  
23 believe to offer any new testimony. We would just  
24 incorporate by reference his prior testimony about the need  
25 for a sale.



1 THE COURT: All right. So then first the Court  
2 will take notice of the various pleadings thus far filed in  
3 the PCD cases. I will incorporate the declaration of Mr.  
4 Cunsmann. I'll incorporate the testimony on both direct and  
5 cross-examination and redirect of Mr. Saperstein from the  
6 bid procedures hearing.

7 Let's then get Mr. Barbieri up to the lectern.

8 If you will identify yourself and please raise  
9 your right hand to be sworn by the court reporter.

10 MR. BARBIERI: Sure. Eric Barbieri, B-A-R-B-I-E-  
11 R-I. I'm with Richter Consulting.

12 (Witness sworn)

13 THE COURT: All right. So I'm --

14 THE CLERK: State please --

15 THE COURT: Go ahead.

16 THE CLERK: Go ahead.

17 THE COURT: So I'm going to have Mr. Grillo make a  
18 proffer of your testimony. I'm then going to ask you  
19 whether or not you incorporate that proffer as your  
20 testimony.

21 All right. So, Mr. Grillo.

22 MR. GRILLO: Now that he's been sworn in, if  
23 called to the stand, Mr. Barbieri would testify to the  
24 following:

25 First, that he's a managing director of Richter

1 Consulting. Richter Consulting specializes in among other  
2 things advising troubled companies.

3 Mr. Barbieri would also testify that as part of  
4 this responsibilities at Richter Consulting he was assigned  
5 to the engagement of the debtors, PCD, and that his  
6 engagement commenced in September of 2012.

7 He would also testify that with respect to his  
8 duties, that they were wide-ranging with respect to a wide  
9 variety of financial services and that he was responsible,  
10 in part, for assisting the company in developing its  
11 business plan, assisting the company in preparing its  
12 numbers, performing a variety of analyses and preparing a  
13 variety of financial reports, not just for the company  
14 itself, but for its lenders.

15 He would also testify that he communicated with  
16 its lenders on a regular basis in order to provide them with  
17 the information as it was requested from time to time.

18 Mr. Barbieri, if also called to testify, would  
19 also state that his knowledge of the financial conditions of  
20 the debtor is -- is deep and broad; that he has -- was aware  
21 of all of the operational issues of the company, and that he  
22 was familiar with the restructuring negotiations that began  
23 shortly after Mr. Apling took office as the CEO of the  
24 company.

25 He would testify that going back to September of

1 last year the company entered a severe amount of distress  
2 due to a number of factors:

3 One, the changes in the marketplace for smart  
4 phones that the company distributed in the United States and  
5 abroad;

6 Number two, the company was also affected by the  
7 departure of Mr. Christopher, and as a a result of these two  
8 and other events, began to experience severe extremis on its  
9 operations.

10 As a result, its financial performance declined  
11 and whereas the money -- whereas the corporation had made  
12 money in prior years, 2012 started to run negative, and that  
13 from that point in time the company wound up in default by  
14 the end of the year under its credit agreement.

15 Mr. Barbieri would also testify that during that  
16 time frame he participated in negotiations with the lenders  
17 with respect to the defaults and also worked with the  
18 company to develop a strategy for responding to them.

19 In that respect, Mr. Barbieri would also testify  
20 that with respect to the number of actions that the company  
21 took, it agreed to retain an investment banker to look at a  
22 potential sale of the company. When advising the board,  
23 along with the other -- along with the company's other  
24 advisors and its management team, it was ultimately  
25 determined that the highest and best value for the company

1 would be in a going concern sale.

2 Mr. Barbieri and his colleagues from Richter  
3 Consulting prepared a number of liquidation analyses over  
4 the course of the first six to seven months of 2013 and he  
5 would further testify that his conclusion from the  
6 preparation of those liquidation analyses is that the  
7 volatile value of the debtors' inventory and the value that  
8 the debtors provided for their inventory meant that if the  
9 company were forced to liquidate, that it would have a  
10 severely depressing effect on its asset values, primarily in  
11 two respects:

12 First, with respect to the inventory. The  
13 inventory requires it to be programmed in order to achieve  
14 its value. It also needs to be accompanied by a service  
15 plan in order to continue to service the products for the  
16 carriers. If it were unable to do that; that is, if it  
17 discontinued operations or couldn't provide a successor to  
18 its operations, then in that instance there would have a  
19 very -- there would be a very negative effect on value  
20 prospectively.

21 Similarly, with respect to its receivables, which  
22 is another one of the purchased assets that are part of the  
23 asset purchase agreement here, the receivables are owed  
24 primarily to the carriers. With respect to the carriers  
25 such as Verizon, Sprint & AT&T, there are ongoing

1 obligations of PCD, particularly to service and provide  
2 warranty coverage for the devices that it sells.

3 In the absence of being able to provide that  
4 service or contract out to provide that service, it is  
5 highly likely that the carriers would -- would adversely  
6 charge PCD against the receivables, thereby dragging them  
7 down in value and reducing the likelihood of collectability  
8 in full of the amounts outstanding in a liquidation.

9 So Mr. Barbieri would testify that it was the  
10 combined conclusion of the management team, the board and  
11 its advisors that a going concern sale was in the best  
12 interest of the business.

13 Mr. Barbieri would further testify that the  
14 company engaged in a sale process that was run by BGSA in  
15 which the management team, including Mr. Apling, played an  
16 important leading role. Also, with the assistance of its  
17 lenders, the company agreed -- the company concluded that  
18 maintaining its operations during this time would be the  
19 best way to maximize value.

20 He would also testify that in December or January of --  
21 December 2012, January of 2013 that the senior bank debt at  
22 that time was north of \$150 million; that it had been paid  
23 down from an even higher amount than that; and that the  
24 company continued to maximize the value by selling at higher  
25 values than liquidation value the excess inventory that it

1 had over a period of time that allowed it to reduce its bank  
2 debt and to continue to operate at least on a somewhat  
3 reduced basis.

4 With respect to the sale process, Mr. Barbieri  
5 would say that he played a material role in advising the  
6 company during that period of time, mostly preparing the  
7 reports that were circulated to potential purchasers,  
8 helping them analyze business plans, negotiating the terms  
9 of the sale. He participated closely in the negotiations  
10 with Quality One as well as with other potential purchasers  
11 and played a meaningful role in all of those negotiations.

12 He would further testify that with respect to  
13 those negotiations, that the company did its best to  
14 leverage what -- you know, what little ability it had to try  
15 and maximize the value and the return as part of that  
16 process, and that included a number of elements such as the  
17 working capital adjustment, all with the goal of maximizing  
18 the return to the estate from that process.

19 For these reasons, if asked for his conclusion,  
20 Mr. Barbieri would conclude in his testimony that the sale  
21 that is proposed and presented to the Bankruptcy Court today  
22 provides greater value than would a liquidation of the  
23 assets in a Chapter 7 or in an out of court format.

24 With respect to the other elements that have been  
25 raised, Mr. Barbieri would testify that with respect to the

1 payments made to the second lien lenders that the company  
2 has not -- the company has paid down its (indiscernible)  
3 looked to sort of negotiate with the second lien lenders as  
4 to what transaction made sense;

5 that he made sure that they had given their  
6 approval to that transaction given the liens that they had  
7 on the claims;

8 And that the price for the assets which originally  
9 included the litigation claims that were part of the estate  
10 was the highest and best offer it had and that subject to a  
11 follow up with respect to the post-bankruptcy auction  
12 process, that this was ultimately the best offer that was  
13 received and, in fact, was the only qualified offer that was  
14 received.

15 There are certain closing conditions to the  
16 transaction. Mr. Barbieri would conclude as part of his  
17 testimony that the debtors had the ability -- have the  
18 ability to satisfy those closing conditions, those that were  
19 in the debtors' control, for example, those -- of those that  
20 were raised in the creditors' committee objection. One of  
21 the elements was that the components -- the cash component  
22 of the stalking horse price -- purchase price cannot exceed  
23 \$47 million.

24 Mr. Barbieri would testify that the amounts  
25 outstanding under the DIP loan agreement which would have to

1 be satisfied in cash as part of the closing would not exceed  
2 that amount. Also, that the composition of the assets  
3 pursuant to which 80 percent had to consist of accounts --  
4 eligible accounts receivable will also be met.

5 There is an MAE provision in the agreement which  
6 states that if the net -- negative -- net working capital  
7 adjustment was adjusted downward at closing by 7.5 million  
8 or more, that that would be a material adverse change or  
9 material adverse affect that would allow Quality One to exit  
10 the transaction.

11 Mr. Barbieri would testify that the company's net  
12 working capital position which he has monitored closely will  
13 not be negative and will, in fact, be higher, and it is his  
14 belief and understanding that if current trends continue, by  
15 the time of the final closing it will, in fact, be  
16 substantially higher than even the upward adjustment of 7.5  
17 million.

18 With respect to some of the issues on the purchase  
19 price, concerns were raised about the variable nature of the  
20 purchase price. For the same reasons, with regard to the  
21 working capital adjustment, Mr. Barbieri would testify that  
22 there would be -- that the purchase price would be  
23 sufficient to pay the DIP loan in full and also to max out  
24 the amounts payable under the notes; that there is also  
25 sufficient value in the transaction such that the



1 modifications that have been proposed and raised today as  
2 part of the transaction can be satisfied.

3 With regard to concerns about whether or not the  
4 debtors have given away their upside as part of the  
5 transaction, certainly the modifications that have been made  
6 to the transaction today, Mr. Barbieri would testify that,  
7 in fact, that the debtors have captured significant value  
8 that they would otherwise not have been able to undertake  
9 today, especially in light of the fact that there was not a  
10 formally qualifying competing bid as part of this auction.

11 With respect to a potential risk of administrative  
12 insolvency, the fact that the (indiscernible) to the  
13 purchase price consideration, number one, confirming that  
14 the full amount of the administrative expense reserve will  
15 be available; that between that and the increase in the  
16 amount of the wind down expenses from 250,000 to 500,000,  
17 those two elements ensure that there is minimal, if  
18 negligible risk of administrative insolvency.

19 Finally, with respect to a concern that may have  
20 been raised with respect to the sale of cash, the company  
21 does not, in fact, retain its cash, but turns it over to its  
22 lender through a lock box system because this is an asset  
23 based facility.

24 When asked ultimately whether or not, given all of  
25 the circumstances and given his experience with the company

1 for well over a year, Mr. Barbieri would testify that it is  
2 in his belief as a financial consultant with approximately  
3 20 years of experience that this sale is in the best  
4 interest of the business and his testimony would be that  
5 it's his recommendation that the sale be approved by this  
6 Court.

7 All right. Mr. Barbieri, if you would step  
8 forward.

9 Have you heard the proffer made of the testimony  
10 that you would give here today?

11 MR. BARBIERI: I have.

12 THE COURT: Do you accept that proffer as your own  
13 testimony?

14 MR. BARBIERI: Yes, I do.

15 THE COURT: All right.

16 Any party present wish to cross-examine Mr.  
17 Barbieri on his proffer?

18 All right. Very well. You may step back. Thank  
19 you.

20 Then as to Mr. Harris, sir, if you would step  
21 forward. And when you get to the lectern if you would state  
22 your name and then raise your right hand to be sworn by the  
23 court reporter.

24 MR. HARRIS: Marshall Harris, H-A-R-R-I-S.

25 (Witness sworn)

1 THE COURT: All right. Will Mr. Harris's proffer,  
2 Mr. Grillo, that be made by you?

3 MR. GRILLO: Yes.

4 THE COURT: All right. Very well.

5 Sir, if you would just step back or to the side  
6 for Mr. Grillo.

7 Same as with Mr. Barbieri. Mr. Grillo will  
8 outline the proffer of your testimony. I'll ask then you  
9 whether you adopt that as your -- as your testimony.

10 MR. GRILLO: If called to testify, Mr. Harris, we  
11 believe, would testify to the following:

12 Number one, that he is the general counsel of  
13 Quality One Wireless and that as part of his  
14 responsibilities he played a significant, if not leading  
15 role in connection with the negotiations related to the  
16 asset purchase agreement that's presently before the Court.

17 With respect to his responsibilities in that  
18 regard, he was responsible for and familiar with all aspects  
19 of the asset purchase agreement and, in fact, was the  
20 leading negotiator on behalf of Quality One in connection  
21 with that transaction.

22 In addition, it was among his responsibilities to  
23 make sure that all of the closing conditions for the  
24 transaction would ultimately be met. And specifically in  
25 that regard among his responsibilities was to ensure that

1 the form and substance of the notes and the guarantees which  
2 were being provided by his financing sources were, in fact,  
3 satisfactory to them and that he has that approval from  
4 them.

5 He would also testify with respect to the assigned  
6 purchase contracts that that requirement or that closing  
7 condition has also been met; that is, that Quality One has  
8 reached agreement with respect to the contracts that it  
9 intends to take assignment of after assumption by the  
10 debtors, and that is part of the order.

11 He would also testify that he participated in the  
12 settlements that were made part of the record today and that  
13 those are acceptable to Quality One.

14 He would also testify that with respect to the  
15 condition relating to the number of employees that were  
16 required as part of a condition that we needed to hire that  
17 he has surpassed and achieve -- has achieved and surpassed  
18 that threshold in terms of the number of employees that are  
19 required to be signed.

20 In addition, if asked Mr. Harris would take the  
21 position that this is -- this has been an arm's length  
22 transaction; that there was no other prior relationship  
23 other than a minor vendor/vendee, vendor/seller --  
24 seller/buyer relationship for certain equipment with respect  
25 to the debtors; that there is no other interlocking

1 management that existed at any time prior to that. The  
2 buyer was not an insider of the debtor as that is defined  
3 under the Bankruptcy Code, and the buyer has not engaged in  
4 any conduct that would permit or cause the agreement to be  
5 avoided under Section 363(m), and on that basis would be  
6 entitled to the protections of 363(m) with respect to the  
7 good faith protections afforded by that provision of the  
8 Bankruptcy Code.

9 Finally, if -- if asked, Mr. Harris would testify  
10 that the purchaser is not a successor to the debtor; that it  
11 is intending to buy its assets free and clear of all liens,  
12 claims and encumbrances other than those that are expressly  
13 part of the assumed liabilities. It's not a continuation or  
14 substantial continuation of the debtors' business or  
15 enterprise. It does not have a common identity of  
16 incorporators, directors or equity holders with the debtor,  
17 and is not holding itself out as a -- to the public as a  
18 continuation of the debtors.

19 We believe if called to testify that he would also  
20 indicate that Quality One has the financial wherewithal as a  
21 result of its credit facility to satisfy its obligations  
22 under the agreement, not just merely the purchase price  
23 consideration, but the ongoing obligations under the assumed  
24 contracts and, thus, could satisfy its requirements for  
25 adequate assurance of those agreements. And, certainly,

1       there are no longer any pending objections in this regard.

2               As a result, Mr. Harris would, I think, also ask  
3       this Court to approve the transaction on this basis pursuant  
4       to the terms in the APA and the proposed form of order. And  
5       that would conclude his direct testimony.

6               THE COURT: All right. Very well.

7               Mr. Harris, have you heard the proffer made of  
8       your testimony?

9               MR. HARRIS: Yes, Your Honor.

10              THE COURT: Do you adopt that proffer as your own  
11       testimony?

12              MR. HARRIS: Yes, Your Honor, with one slight  
13       modification or clarification. The forms of notes to the  
14       second and third lenders and the related documents will  
15       require some modification based on the modifications agreed  
16       upon today. But beyond that the form and substance has been  
17       approved.

18              THE COURT: All right.

19              Any party present wish to cross-examine Mr. Harris  
20       on his testimony?

21              Very well. Thank you, sir. You may return to  
22       your seat.

23              MR. GRILLO: Your Honor, that would conclude the  
24       direct evidence that the debtors would offer in support of  
25       the sale motion before the Court.

1 THE COURT: All right.

2 Anything further, then, from any other party in  
3 interest present?

4 All right. Then based upon the record made, both  
5 the evidence presented which I've incorporated into this  
6 hearing, the evidence presented today given the agreements  
7 that have been made and made a part of the record which will  
8 become part of the sale order, the Court is prepared to  
9 approve the sale to the purchaser as designated in the  
10 proposed form of order, euphemistically referred to today as  
11 Quality One.

12 The Court, among other findings, does find that  
13 the sale of the assets of the debtor being sold is in the  
14 best interest of the estate; that the debtors' assets which  
15 are being sold have been actively, openly and vigorously  
16 marketed, and that the sale, both the price and  
17 consideration, are a fair representation of those assets in  
18 the marketplace; that the negotiations have been at arm's  
19 length; that the case has had active representation between  
20 the debtor, the committee, the lenders and the proposed  
21 purchaser. There -- there is no collusion among parties,  
22 and that the purchaser will be entitled to the 363(m)  
23 protections.

24 Under the circumstances, including the prior DIP  
25 order, both interim and final which have been entered by the

1 Court, cause does exist to waive the 14 day stay otherwise  
2 available under Rule 6004. So upon entry of the final sale  
3 order, the parties may move expeditiously to close on the  
4 sale.

5 I have -- the Court has reviewed generally a  
6 proposed form of -- amended proposed form of sale order. I  
7 know it's going to be changed somewhat to the next  
8 iteration, but the other findings which the Court has been  
9 asked to make in the proposed form of order that has been  
10 thus far uploaded, the Court is also prepared to make and  
11 will be part of the final sale record.

12 Mr. Grillo.

13 MR. GRILLO: We have nothing further, Your Honor.  
14 We would like to thank the Court for its time and attention.

15 THE COURT: All right. Well, very well. With the  
16 Court's appreciation for you all getting this done, I said  
17 at a prior hearing that the more time you spend talking to  
18 each other, the less time you need to spend talking to me  
19 and that has apparently again proven out.

20 So, again, the Court's appreciation for the good  
21 work that has been done. And from a timing mechanic, as  
22 soon as you can get us a final order we will look for it.  
23 If it's to us Monday, we will look for it Monday so that it  
24 can get entered.

25 And we will -- the Court will resolve this issue



1 about the assignment at -- following the hearing or at the  
2 hearing to be held Tuesday morning.

3 So with that, we will be adjourned on PCD.

4 MR. GRILLO: Thank you, again, Your Honor.

5 (A chorus of thank you)

6 (Whereupon, these proceedings were concluded at 3:06  
7 p.m.)

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## I N D E X

## RULINGS

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Hearing on the Approval of the		
Successful Bid(s) and Backup Bid(s)		
[10]	--	--

Adj Motion for 2004 Examination		
Motion of the Official Committee of		
Unsecured Creditors for Leave to		
Conduct Discovery of the Second Lien		
Lenders Filed by Schuyler G. Carroll		
on behalf of Official Committee of		
Unsecured Creditors [143]		

Adj Motion for 2004 Examination		
Motion of the Official Committee of		
Unsecured Creditors for Leave to		
Conduct Discovery of Debtors Filed by		
Schuyler G. Carroll on behalf of		
Official Committee of Unsecured		
Creditors [140]	--	--

C E R T I F I C A T I O N

I, Sherri L. Breach, CERT\*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sherri L  
Breach

Digitally signed by Sherri L Breach  
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SHERRI L. BREACH

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Date: November 25, 2013